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ILLINOIS REGISTER

Rules of Governmental Agencies

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GEORGE H. RYAN
Secretary of State

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Secretary of State
Administrative Code Div.
288 Centennial Bldg.
Springfield, IL 62756

(217) 782-9786

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INTRODUCTION

The Illinois Register is the official state document for publishing public notice of rulemaking activity by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. Rulemaking activity consists of proposed or adopted new rules or amendments to or repealers of existing rules, including those by emergency or peremptory action.

The *Register* also contains Executive Orders and Proclamations issued by the Governor, notices of public information required by State statute, and activities (meeting agendas, Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State agencies. In addition, the *Register* contains a Cumulative Index listing alphabetically by agency the Parts (sets of rules) on which rulemaking activity has occurred in the current *Register* volume and a Sections Affected Index listing, by Title of the *Illinois Administrative Code*, each Section (including supplementary material) of a Part on which rulemaking activity has occurred in the current volume. Both indices are action coded and are designed to aid the public in monitoring rules.

The *Register* will serve as the update to the *Illinois Administrative Code*, a compilation of the rules of State agencies. The most recent edition of the *Code* along with the *Register* comprise the most current accounting of the State agencies' rules.

The *Illinois Register* is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1989, ch. 127, pars. 1001 et seq., as amended).

REGISTER PUBLICATION SCHEDULE 1991

Material Rec'd after 4:30 p.m. on:	And before 4:30 p.m. on:	Will be in Issue #:	Published on:	Material Rec'd after 4:30 p.m. on:	And before 4:30 p.m. on:	Will be in Issue #:	Published on:
Dec. 18, 1990	Dec. 24, 1990	1	Jan. 4, 1991	June 25, 1991	July 2, 1991	28	July 12, 1991
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May 14, 1991	May 21, 1991	22	May 31, 1991	Nov. 19, 1991	Nov. 26, 1991	49	Dec. 6, 1991
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Please note: When the Register deadline falls on a State holiday, the deadline becomes 4:30 p.m. on Monday (the day before).

INTRODUCTION

The Illinois Department of Transportation (IDOT) is the lead agency for the Illinois Tollway Authority (ITA) and the Illinois State Tollway Authority (ISTA). The ITA and ISTA are both public entities that are responsible for the operation and maintenance of the state's toll roads. The ITA is responsible for the operation and maintenance of the state's toll roads, while the ISTA is responsible for the operation and maintenance of the state's toll roads.

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Year	Revenue	Expenses	Net Income
1990	\$1.2	\$1.1	\$0.1
1991	\$1.3	\$1.2	\$0.1
1992	\$1.4	\$1.3	\$0.1
1993	\$1.5	\$1.4	\$0.1
1994	\$1.6	\$1.5	\$0.1
1995	\$1.7	\$1.6	\$0.1
1996	\$1.8	\$1.7	\$0.1
1997	\$1.9	\$1.8	\$0.1
1998	\$2.0	\$1.9	\$0.1
1999	\$2.1	\$2.0	\$0.1
2000	\$2.2	\$2.1	\$0.1
2001	\$2.3	\$2.2	\$0.1
2002	\$2.4	\$2.3	\$0.1
2003	\$2.5	\$2.4	\$0.1
2004	\$2.6	\$2.5	\$0.1
2005	\$2.7	\$2.6	\$0.1
2006	\$2.8	\$2.7	\$0.1
2007	\$2.9	\$2.8	\$0.1
2008	\$3.0	\$2.9	\$0.1
2009	\$3.1	\$3.0	\$0.1
2010	\$3.2	\$3.1	\$0.1
2011	\$3.3	\$3.2	\$0.1
2012	\$3.4	\$3.3	\$0.1
2013	\$3.5	\$3.4	\$0.1
2014	\$3.6	\$3.5	\$0.1
2015	\$3.7	\$3.6	\$0.1
2016	\$3.8	\$3.7	\$0.1
2017	\$3.9	\$3.8	\$0.1
2018	\$4.0	\$3.9	\$0.1
2019	\$4.1	\$4.0	\$0.1
2020	\$4.2	\$4.1	\$0.1

Source: IDOT, ITA, and ISTA. Data is for the fiscal year ending June 30.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Personal Use of State Telephones

2) Code Citation: 44 Ill. Adm. Code 5030

3) Section number: Proposed Action:

5030.130 Amendment

4) Statutory Authority: Implementing Sections 67.18 and 67.22 and authorized by Section 16 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1989, ch. 127, pars. 63b13.18, 63b13.22 and 16).

5) A Complete Description of the Subjects and Issues Involved:

Currently, Travel Regulation Council rules authorize reimbursement for telephone calls of three minutes or less from non-State telephones to announce safe arrival, delays or changes in plans. The Department is amending this section so that the policy for State telephones is consistent with the Travel Regulation Council rules (See 80 Ill. Adm. Code 3000.600(a)(5)).

6) Will this proposed amendment replace an emergency rule currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Does this proposed amendment contain incorporations by reference? No.

9) Are there any other proposed amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: Rulemaking does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments within 45 days of the date of publication to:

Stephen W. Seiple
720 Stratton Office Building
Springfield, IL 62706
(217)782-9669

12) Initial Regulatory Flexibility Analysis: Does not apply to small businesses.

The full text of the Proposed Amendment begins on the next page.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT

SUBTITLE D: PROPERTY MANAGEMENT
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 5030

PERSONAL USE OF STATE TELEPHONES

Section	Authority
5030.100	Provision of Telephone Service
5030.110	Applicability
5030.120	Telephone Usage Policy
5030.130	Discipline
5030.140	

AUTHORITY: Implementing Sections 67.18 and 67.22 and authorized by Section 16 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1989, ch. 127, pars. 63b13.18, 63b13.22 and 16).

SOURCE: Adopted at 7 Ill. Reg. 9203, effective August 1, 1983; codified at 8 Ill. Reg. 7219; amended at 8 Ill. Reg. 17261, effective October 1, 1984; emergency amendment at 14 Ill. Reg. 11351, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 19149, effective November 27, 1990; amended at 15 Ill. Reg. _____, effective _____.

Section 5030.130 Telephone Usage Policy

- a) The intent of this policy is to permit State employees to make reasonable, as defined in subsections (h) and (c), use of State telephone systems and, at the same time, to guard against telephone abuse.
- b) The use of State telephone services is limited to official business. Official business calls include emergency calls and calls that are in the best interest of the State. A call shall be considered as authorized in the best interest of the State if it meets the following criteria:
 - 1) It does not adversely affect the performance of official duties by the employee or the employee's organization.
 - 2) It is of reasonable duration and frequency, in accordance with subsection (c), and
 - 3) It could not have reasonably, in accordance with subsection (c), been made during non-work hours.
- c) Examples of circumstances that fall under the above guidelines include, but are not limited to, the following:

- 1) An employee is required to work overtime without advance notice and calls within the local commuting area (the area from which the employee regularly commutes) to advise his or her family of the change in schedule or to make alternate transportation or child- or elder- care arrangements.
- 2) An employee makes a brief call to locations within the local commuting area to speak to spouse, minor children, elderly parent (or those responsible for them, e.g., school or day care center, nursing home, etc.).
- 3) The employee makes brief calls within the local commuting area that can be reached only during working hours, such as a local government agency or a physician.
- 4) An employee makes brief calls to locations within the local commuting area to arrange for emergency repairs to his or her residence or automobile.
- 5) While on official business, the employee makes a call of three minutes or less to announce safe arrival, delay or a change in plans.

AGENCY NOTE: Brief shall mean the time it takes to accomplish the purpose of the call.

- d) A personal call made during working hours that falls under the guidelines in Sections 5030.130(b)(1), (2) and (3), but is not representative of the examples given in Sections 5030.130(c)(1), (2), (3) and (4), is permitted if:

- 1) It is charged to the employee's home phone number or other non-government number,
- 2) It is made to an "800" toll-free number,
- 3) It is charged to the called party if a non-state number, or
- 4) It is charged to a personal credit card.

- e) For any use of State telephones beyond the parameters of this policy, employees shall be charged actual Department of Central Management Services billed charges plus \$1.00 per minute for long distance calls and \$.50 per minute for local calls. These rates are intended to cover the cost of the calls and the administrative costs associated with processing payment.

- f) The employee shall reimburse the State for toll and other charges by personal check payable to the General Revenue Fund or other

appropriate fund as designated by the agency employing the individual. If not paid within 30 days of billing, collection action will be instituted through appropriate legal means.

(Source: Amended at Ill. Reg. _____, effective _____)

DEPARTMENT OF FINANCIAL INSTITUTIONS

NOTICE OF PROPOSED AMENDMENTS

- 1) **Heading of Part:** Uniform Disposition of Unclaimed Property Act
- 2) **Code Citation:** 38 Ill. Adm. Code 180
- 3) **Section Number:** Proposed Action:
180.90 Amendment
- 4) **Statutory Authority:** Implementing and authorized by the Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1981, ch. 141, pars. 101 et seq.).
- 5) **Complete Description of the Subjects and Issues Involved:** Proposed Section 180.90(c) sets forth standards upon which the Director of the Department of Financial Institutions may rely in determining if there has been a potential failure to report unclaimed property. Further, these standards place all holders on notice of the standards thereby precluding unwarranted examinations.
- 6) **Will this Proposed Rule Replace an Emergency Rule Currently in Effect?** No
- 7) **Does this Rulemaking Contain an Automatic Repeal Date?** No
- 8) **Does this Rulemaking Contain Incorporations by Reference?** No
- 9) **Are there Any amendments Pending on this Part?** No
- 10) **Statement of Statewide Policy Objectives:** This rulemaking does not create or expand a state mandate as defined in Section 3(b) of the State Mandate Act (Ill. Rev. Stat. 1989, ch. 85, par. 2203).

- 11) **Time, Place and Manner in Which Interested Persons May Comment on this Rulemaking:** The Department will accept only comments submitted on a RESPONSE FORM provided by the Department. Comments must be received within forty-five days of the date of this publication.

Requests for response forms and submission of comments are to be directed to:

Henry Sintzenich, Deputy Counsel
Consumer Credit Division
Department of Financial Institutions
500 Iles Park Place, Suite 314
Springfield, IL 62718-1094
217-782-3704

- 12) **Initial Regulatory Flexibility Analysis:**

- A) **Date Rule was Submitted to the Business Assistance Office of Commerce and Community Affairs:** January 21, 1991

DEPARTMENT OF FINANCIAL INSTITUTIONS

NOTICE OF PROPOSED AMENDMENTS

- B) **Types of Small Business Affected:** This proposal only affects a small business which is a holder of abandoned property and has failed to make a proper report to the Department of Financial Institutions.
- C) **Reporting, Bookkeeping or Other Procedures Required for Compliance:** There is no change in the reporting requirements.
- D) **Types of Professional Skills Necessary for Compliance:** Business management and recordkeeping.

The full text of the proposed amendment(s) begins on the next page:

DEPARTMENT OF FINANCIAL INSTITUTIONS

NOTICE OF PROPOSED AMENDMENTS

TITLE 38: FINANCIAL INSTITUTIONS
CHAPTER I: DEPARTMENT OF FINANCIAL INSTITUTIONSPART 180
UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Section	
180.10	Definitions
180.20	Negative Reports
180.30	Safe Deposit Boxes
180.40	Cost of Mailing
180.50	Nominee and Street Name Property
180.60	Lawful Charges
180.70	Discontinuance of Interest or Dividends
180.80	Statute of Limitations
180.90	Examination of Property Holders
180.100	Claims
180.110	Hearings on Claims

AUTHORITY: Implementing and authorized by the Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1981, ch. 141, pars. 101 et seq.).

SOURCE: Filed November 20, 1977; emergency amendment at 3 Ill. Reg. 39, p. 225, effective September 14, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 48, p. 153, effective November 20, 1979, rules repealed, new rules adopted and codified at 8 Ill. Reg. 1464, effective January 18, 1984; amended at _____ Ill. Reg. _____, effective _____.

Section 180.90 Examination of Property Holders

- a) The Director shall notify the holder, in writing, ten days prior to an examination conducted pursuant to Section 23 of the Act. The Director may waive the ten-day notice prior to performing an unclaimed property examination if, as a result of past experience of an examiner consultation, the Director determines that the existence of the records may be placed in jeopardy by use of the notice provision.
- b) If unreported property is discovered, the Director shall order the holder to report and remit the property pursuant to the Act and the Rules.
- c) Pursuant to Section 23 of the Act, the Director shall have *reason to believe* that a holder has failed to report property in accordance with the Act and may examine the records of the holder if any of the following occurs:
 1. A holder has submitted reports to the Department in two successive calendar years in which the holder's reports state it has no unclaimed property.

DEPARTMENT OF FINANCIAL INSTITUTIONS

NOTICE OF PROPOSED AMENDMENTS

2. A holder has not submitted a report to the Department for two successive calendar years.
3. A personal interview by Departmental staff with the appropriate representative of the holder reveals any of the following:
 - A. The holder adjusts its asset statements by writing-off property such as check or credit balances that could be deemed unclaimed property under the Act; or
 - B. The holder does not follow generally-accepted accounting principles (Accounting Standards of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (1990) or the Act with regard to unidentified remittances or the establishment of unclaimed property liability accounts; or
 - C. The holder does not follow generally-accepted accounting principles (Accounting Standards of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (1990) or the Act with regard to the disposition of unidentified credits; or
 - D. The holder does not retain records for five (5) years beyond the period of abandonment to determine the disposition of property which could be deemed abandoned under the Act; or
 - E. The holder's records preclude the Department from determining the disposition of property which could be deemed abandoned under the Act.
4. The Department is notified by another governmental agency that a holder is not in compliance with the Act.
5. The total unclaimed property remitted by a holder is below the average remittance for other holders in the same industry and that have assets of similar size to the holder.
6. A holder does not report all types of unclaimed assets they may be holding as indicated by but not limited to:
 - A. A previous examination of the holder; or
 - B. A comparison with the asset types reported by other holders in the same industry and that have assets of similar size to the holder.

DEPARTMENT OF FINANCIAL INSTITUTIONS

NOTICE OF PROPOSED AMENDMENTS

7. A holder is discovered as a subsidiary or affiliate of another holder which has been or is being examined.
8. A holder is discovered as a principal or holding company of another holder which has been or is being examined.
9. An unclaimed property examination of the records of the holder has not been performed for 5 or more calendar years.
10. Changes in a holder's business practices, including, but not limited to, changes in financial status, technological advances, corporate structure, change in ownership, etc.

(Source: Amended at 15 Ill. Reg. _____, effective _____)

DEPARTMENT OF MINES AND MINERALS

NOTICE OF PROPOSED AMENDMENT(S)

- 1) The Heading of the Part: Areas Designated by Act of Congress
- 2) Code Citation: 62 Ill. Adm. Code 1761
- 3) Section Number:
1761.11
1761.12
Proposed Action:
Amended
Amended
- 4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).
- 5) A complete description of the subjects and issues involved:
Part 1761 establishes procedures and standards to be followed in determining whether a proposed surface mining operation can be permitted in light of the prohibitions and limitations in Section 7.01 of the Surface Coal Mining Land Conservation and Reclamation Act. Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7907.01.

The Illinois Department of Mines and Minerals (Department) is proposing to amend Section 1761.11(a) by deleting the word "future" in response to the Federal Office of Surface Mining Reclamation and Enforcement's (OSMRE) letter of December 21, 1990, wherein it is stated that guidelines established pursuant to the Wild and Scenic Rivers Act already exist. The proposed amendment serves to make the Department's requirements consistent with and no less effective than OSMRE's counterpart regulation, 30 CFR 761.11, and serves to incorporate by reference such guidelines in accordance with Section 6.02(b) of the Illinois Administrative Procedure Act. Ill. Rev. Stat. 1989, ch. 127, par. 1006.02.

The proposed amendments to Sections 1761.11(d) and 1761.12(c) would only require the approval of public road authorities where public roads are to be relocated or closed. The approval of public road authorities would no longer be required with respect to affected areas within one hundred (100) feet of a public road. These proposed amendments make the Department's regulations consistent with the fact that public road authorities have no jurisdiction under the Surface Coal Mining Land Conservation and Reclamation Act, Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq., with respect to affected areas; such jurisdiction is limited to relocation and closure of public roads.

The proposed amendment to Section 1761.12(c)(2) establishes a time limit in which public hearing requests must be submitted to the Department. The proposed amendment provides the Department and the public with guidance as to when a hearing must be requested.

DEPARTMENT OF MINES AND MINERALS
NOTICE OF PROPOSED AMENDMENT(S)

- D) Types of professional skills necessary for compliance: None
The full text of the Proposed Amendments begins on the next page.

DEPARTMENT OF MINES AND MINERALS
NOTICE OF PROPOSED AMENDMENT(S)

- 6) Will this proposed rule replace an emergency rule currently in effect?
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? Yes
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m. in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991
- B) Types of small businesses affected: This rulemaking does not affect small businesses.
- C) Reporting, bookkeeping or other procedures required for compliance:
None

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1761

AREAS DESIGNATED BY ACT OF CONGRESS

Section

1761.1 Scope

1761.11 Areas Where Mining is Prohibited or Limited

1761.12 Procedures

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4933; amended at 11 Ill. Reg. 7976, effective July 1, 1987; amended at 14 Ill. Reg. 1177, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1761.11 Areas Where Mining is Prohibited or Limited

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

- a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) or study rivers or study river corridors as established in any future guidelines pursuant to that Act published at 47 FR 39454 (September 7, 1982), and National Recreation Areas designated by Act of Congress. The guidelines at 47 FR 39454 do not include any subsequent editions or amendments:
- b) On any Federal lands within the boundaries of any national forest; provided, however, that surface coal mining operations may be permitted on such lands, if the Secretary of the United States Department of the Interior (Secretary) finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and surface operations and impacts are incident to an underground coal mine;
- c) On any lands which will adversely affect any publicly owned park or any places included on the National Register of Historic Places,

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unless approved jointly by the Department and the Federal, State or local agency with jurisdiction over the park or places;

- d) Within one hundred (100) feet measured horizontally of the outside right-of-way line of any public road, except:

- 1) Where mine access roads or haulage roads join such right of way lines; or
- 2) Where the Illinois Department of Mines and Minerals (Department) and the public road authority with jurisdiction over the road under Illinois law allows the public road to be relocated, or closed, or the area affected, including surface areas impacted by planned subsidence, to be within one hundred (100) feet of such road, after:

- A) Public notice and opportunity for a public hearing in accordance with Section 1761.12(c); and
- B) For relocated or closed public roads, the public road authority with jurisdiction over the road under Illinois law, allows the public road to be relocated or closed; and
- B) C) Making a written finding that the interests of the affected public and landowners will be protected.

- e) Within three hundred (300) feet measured horizontally, from any occupied dwelling in existence, under construction, or contracted for at the time of public notice, except when:

- 1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than three hundred (300) feet; or
- 2) The part of the mining operation which is within three hundred (300) feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;
- f) Within three hundred (300) feet measured horizontally of any public building, school, church, community or institutional building, or public park; or
- g) Within one hundred (100) feet measured horizontally of a cemetery.
- h) There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National

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Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

(Source: Amended at ____ Ill. Reg. ____, effective ____)

Section 1761.12 Procedures

- a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the Department shall review the application to determine whether surface coal mining operations are limited or prohibited under Section 1761.11 on the lands which would be disturbed by the proposed operations.

- b) Federal recreational systems; public buildings; cemeteries

- 1) Where the proposed operation would be located on any lands listed in Section 1761.11(a), (f) or (g), the Department shall reject the application if the applicant has no valid existing rights for the area or if the operation did not exist on August 3, 1977.

- 2) If the Department is unable to determine whether the proposed operation is located within the boundaries of any of the lands in Section 1761.11(a) or closer than the limits provided in Section 1761.11(f) and (g), the Department shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it must respond within thirty (30) days of receipt of the request. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of the notification in which to respond. The Department, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional thirty (30) days. If no response is received within 30-day period or within the extended period granted, the Department may make the necessary determination based on the information it has available.

- c) Where the proposed mining operation is proposed to be conducted within one hundred (100) feet measured horizontally, of the outside right-of-way line of any public road (except as provided in Section 1761.11(d)(2)), or where the applicant proposes to relocate or close any public road, the Department and the public read authority with

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~~jurisdiction over the road under Illinois law shall:~~

- 1) For relocation or closure of a public road. Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;
- 2) Provide public notice in a newspaper of general circulation of the affected locale of an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected. Any person with an interest which is or may be adversely affected by the proposed mining operation may request in writing that the Department hold a public hearing. Such request shall be submitted to the Department within fourteen (14) days after the newspaper notice required by this subsection.
- 3) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least two (2) weeks prior to the hearing; and
- 4) Make a written finding based upon information received at the public hearing within thirty (30) days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operations. No mining shall be allowed within one hundred (100) feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the Department and public road authority determines that the interests of the public and affected landowners will be protected.

d) Occupied dwellings

- 1) Where the proposed surface coal mining operations would be conducted within three hundred (300) feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed or other conveyance from the owner of the dwelling, clarifying that the owner and signatory had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.
- 2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within three hundred

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(300) feet of such dwelling, a new waiver shall not be required.

3)

A) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

B) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the three hundred (300) foot limit prior to the date of purchase.

e) Publicly owned parks; places included in the National Register of Historic Places

1) Where the Department determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Department shall transmit to the Federal, State, or local agencies with jurisdiction over the publicly owned park or National Register place a copy of applicable parts of the permit application together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has thirty (30) days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The Department, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional thirty (30) days. Failure to interpose an objection within thirty (30) days of the extended period granted shall constitute an approval of the proposed permit.

2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

f) If the Department determines that the proposed surface coal mining operation is not prohibited under Section 7.01 of the State Act and this Part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to 62 Ill. Adm. Code 1762 or 1764.

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g) A determination by the Department that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 62 Ill. Adm. Code 1775.11 and 1775.13.

(Source: Amended at ____ Ill. Reg. ____, effective ____)

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1) The Heading of the Part: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

2) Code Citation: 62 Ill. Adm. Code 1702

3) Section Number:

1702.1 New Section
1702.5 New Section
1702.10 New Section
1702.11 New Section
1702.12 New Section
1702.13 New Section
1702.14 New Section
1702.15 New Section
1702.16 New Section
1702.17 New Section
1702.18 New Section

10) Statement of Statewide Policy Objectives: The proposed rules will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:

On February 7, 1990 and April 24, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) letters notifying it that since the Surface Coal Mining Land Conservation and Reclamation Act (State Act) provides an exemption for coal extraction incidental to the mining of other minerals, Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7901.06(b), the Department needed to revise its program to include, among other things, exemption criteria and application and reporting requirements no less effective than those contained at OSMRE's newly promulgated 30 CFR 702. By these letters OSMRE notified the Department to amend its program requirements in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

In response to OSMRE's directives, the Department is proposing to add Part 1702, which implements the exemption contained in Section 1.06(b) of the State Act, to its regulatory program in order for Illinois' requirements to be consistent with and no less effective than counterpart Federal requirements at 30 CFR 702.

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

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8) Do these proposed rules contain incorporations by reference? No

9) Are there any other rules pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed rules will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect independently owned and operated mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have gross annual sales of less than \$4 million.

C) Reporting, bookkeeping or other procedures required for compliance: Persons planning to extract coal in reliance on the incidental mining exemption must apply to the Department for an exemption determination. Exemption applications must contain certain information as specified in proposed Section 1702.12.

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Persons receiving an exemption must file an annual written report with the Department containing information covering annual production of and revenue derived from coal and other minerals during the preceding 12-month period, and the cumulative production of and revenue derived from coal and other minerals.

The burden for the collections of information contained in proposed Sections 1702.11 through 1702.15 and 1702.18 is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

- D) Types of professional skills necessary for compliance: Bookkeeping

The full text of the Proposed Rules begins on the next page.

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1702

EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO
THE EXTRACTION OF OTHER MINERALS

Section	Scope
1702.1	Definitions
1702.5	Information Collection
1702.10	Application Requirements and Procedures
1702.11	Contents of Application for Exemption
1702.12	Public Availability of Information
1702.13	Requirements for Exemption
1702.14	Conditions of Exemption and Right of Inspection and Entry
1702.15	Stockpiling of Minerals
1702.16	Revocation and Enforcement
1702.17	Reporting Requirements
1702.18	

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at _____ Ill. Reg. _____, effective _____.

Section 1702.1 Scope

This Part implements the exemption contained in Section 1.06(b) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7901.06(b) (State Act) concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total mineral tonnage mined for purposes of commercial use or sale.

Section 1702.5 Definitions

As used in this Part, the following terms have the meaning specified, except where otherwise indicated:

- a) Cumulative measurement period means the period of time over which both cumulative production and cumulative revenue are measured.
 - 1) For purposes of determining the beginning of the cumulative measurement period, the operator must select and consistently use one of the following:
 - i) For mining areas where coal or other minerals were

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extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or the minerals commenced at that mining area, whichever is earlier.

2) For annual reporting purposes pursuant to Section 1702.18, the end of the period for which cumulative production and revenue is calculated is either:

i) For mining areas where coal or other minerals were extracted prior to April 1, 1990, March 31, 1990, and every March 31 thereafter; or

ii) For mining areas where extraction of coal or other minerals commenced on or after April 1, 1990, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

b) Cumulative production means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by Section 1702.16.

c) Cumulative revenue means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

d) Mining area means an individual excavation site or pit from which coal, other minerals and overburden are removed.

e) Other minerals means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

Section 1702.10 Information Collection

The collections of information contained in Sections 1702.11, 1702.12, 1702.13, 1702.15 and 1702.18 will be used to determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with Section 1.06(b) of the State Act.

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Section 1702.11 Application Requirements and Procedures

a)

1) Any person who plans to commence or continue coal extraction after the effective date of this Part in reliance on the incidental mining exemption shall file a complete application for exemption with the Illinois Department of Mines and Minerals (Department) for each mining area.

2) No person may commence coal extraction based upon the exemption until the Department approves such application for exemption, except as provided in 1702.11(e)(3)

b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of this Part may continue mining operations for sixty (60) days after such effective date. Coal extraction may not continue after such sixty (60) day period unless that person files an administratively complete application for exemption with the Department. If an administratively complete application is filed within sixty (60) days, the person may continue extracting coal in reliance on the exemption beyond the sixty (60) day period until the Department makes an administrative decision on such application.

c) Additional information. The Department shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

d) Public comment period. Written comments or objections to an application for exemption may be submitted to the Department by any person having an interest which is or may be adversely affected by the decision on the application within thirty (30) days after the newspaper notice required by Section 1702.12(i).

e) Exemption determination.

1) No later than ninety (90) days after the filing of an administratively complete application, the Department shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this Part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

2) The determination of exemption shall be based upon

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information contained in the application and any other information available to the Department at that time.

- 3) If the Department fails to provide an applicant with the determination as specified in subsection (e)(1), an applicant who has not begun may commence coal extraction pending a determination on the application unless the Department issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

f) Administrative hearing.

- 1) Any adversely affected person may request administrative review of a determination under subsection (e) within thirty (30) days of the notification of such determination in accordance with procedures established under 62 Ill. Adm. Code 1775.11.
- 2) A petition for administrative hearing filed under 62 Ill. Adm. Code 1775.11 shall not suspend the effect of a determination under Section 1702.11(e).

Section 1702.12 Contents of Application for Exemption

An application for exemption shall include:

- a) The name and address of the applicant;
- b) A list of the minerals sought to be extracted;
- c) Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;
- d) Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;
- e) Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
- f) The basis of all annual production, revenue, and fair market value estimates;
- g) A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

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- h) An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operations;

- i) Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the Department. The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation;

- j) Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

- k) A map of appropriate scale which clearly identifies the mining area;

- l) A general description of mining and mineral processing activities for the mining area;

- m) A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

- n) If the other minerals are to be commercially used by the applicant, a description specifying the use;

- o) For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

- 1) Any documents the operator has received from the Department documenting its exemption from the requirements of the State Act;
- 2) The cumulative production of the coal and other minerals from the mining area;
- 3) Estimated tonnages of stockpiled coal and other minerals;

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and

- p) Any other information the applicant believes is pertinent to the qualification of the operation as exempt.

Section 1702.13 Public Availability of Information

- a) Except as provided in Section 1702.13(b), all information submitted to the Department under this Part shall be made immediately available for public inspection and copying at the Department's Springfield and Carterville Land Reclamation Division Offices until at least three (3) years after expiration of the period during which the subject mining area is active.
- b) The Department may keep information submitted under this Part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this Part.

- c) Information requested to be held as confidential under Section 1702.13(b) shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

Section 1702.14 Requirements for Exemption

- a) Activities are exempt from the requirements of the State Act if all of the following are satisfied:

- 1) The cumulative production of coal extracted from the mining area determined annually as described in this Section does not exceed 16 2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.
- 2) Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.
- 3) The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed fifty (50) percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator

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or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

- b) Persons seeking or that have obtained an exemption from the requirements of the State Act shall comply with the following:

- 1) Each other mineral upon which an exemption under this Part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.
- 2) If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

Section 1702.15 Conditions of Exemption and Right of Inspection and Entry

A person conducting activities covered by this Part shall:

- a) Maintain on-site or at other locations available to authorized representatives of the Department information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the Department;
- b) Notify the Department upon the completion of the mining operation or permanent cessation of all coal extraction activities; and
- c) Conduct operations in accordance with the approved application or when authorized to extract coal under Section 1702.11(b) or Section 1702.11(e)(3) prior to submittal or approval of an exemption application, in accordance with the standards of this Part.
- d) Authorized representatives of the Department shall have the right to conduct inspections of operations claiming exemption under this Part.
- e) Each authorized representative of the Department conducting an inspection under this Part:

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- 1) Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;
- 2) May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and
- 3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.
- f) No search warrant shall be required with respect to any activity under Sections 1702.15(d) and (e), unless otherwise required by the Criminal Code of 1961. Ill. Rev. Stat. 1989, ch. 38, pars. 108-1 et seq.

Section 1702.16 Stockpiling of Minerals

- a) Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:
 - 1) Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or
 - 2) For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.
- b) Other minerals.
 - 1) The Department shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.
 - 2) The Department may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this Part if:

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- i) The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and
- ii) Except as provided in Section 1702.16(b)(3), the stockpiled other minerals do not exceed the 12-month supply of the mineral required for future sales as approved by the Department on the basis of the exemption application.
- 3) The Department may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in Section 1702.16(b)(2) if the operator can demonstrate to the Department's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.
- 4) The Department may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by Sections 1702.16(b)(2) and (3) based on additional information available to the Department.

Section 1702.17 Revocation and Enforcement

- a) Department responsibility. The Department shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to Section 1702.18, an on-site inspection and any other information available to the Department.
- b) If the Department has reason to believe that a specific mining area was not exempt under the provisions of this Part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Department shall notify the operator that the exemption may be revoked unless the operator demonstrates to the Department within thirty (30) days that the mining area in question should continue to be exempt.
- c) Exemption revocation.
 - 1) If the Department finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the Department shall revoke the exemption and immediately notify the operator and any person having an interest which is or may be adversely affected by the revocation. If a decision is made not to revoke an

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exemption, the Department shall immediately notify the operator and any person having an interest which is or may be adversely affected by the decision.

- 2) Any person having an interest which is or may be adversely affected may request administrative hearing of a decision whether to revoke an exemption within thirty (30) days of the notification of such decision in accordance with procedures established under 62 Ill. Adm. Code 1775.11.

- 3) A petition for administrative hearing filed under Section 1775.11 shall not suspend the effect of a decision whether to revoke an exemption.

- d) Direct enforcement.

- 1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.
- 2) An operator who does not conduct activities in accordance with the terms of an approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.
- 3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of 62 Ill. Adm. Code 1800-1850 with regard to conditions, areas and activities existing at the time of revocation or denial.

Section 1702.18 Reporting Requirements

- a) Written report.

- 1) Following approval by the Department of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the Department containing the information specified in Section 1702.18(b).
- 2) The report shall be filed no later than thirty (30) days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in Section 1702.5.

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- 3) The information in the report shall cover:

- i) Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and
- ii) The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

- b) For each period and mining area covered by the report, the report shall specify:

- 1) The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;
- 2) The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;
- 3) The number of tons of coal stockpiled;
- 4) The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;
- 5) The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and
- 6) The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

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NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: General

2) Code Citation: 62 Ill. Adm. Code 1700

3) Section Number:
1700.11
Proposed Action:
Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:

On February 7, 1990 and April 24, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) letters notifying it that its 16 2/3 exemption for coal extraction incidental to the extraction of other minerals at 62 Ill. Adm. Code 1700.11(a)(2) was deficient absent the promulgation of exemption criteria and application and reporting requirements no less effective than those contained at OSMRE's newly promulgated 30 CFR 702. By these letters OSMRE notified the Department to amend its program requirements in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

On November 2, 1990, OSMRE's Springfield Field Office Director sent the Department a letter notifying that additional portions of 62 Ill. Adm. Code 1700.11 were inconsistent with counterpart Federal regulations.

The following discussion describes the proposed amendments of Part 1700 in response to OSMRE's directives.

The Department is proposing to amend Section 1700.11(a) in order to make clear that all of the Department's rules apply unless an operation is exempted, rather than just the rules at Part 1700.

The Department is proposing to amend Section 1700.11(a)(2) by adding a reference to 62 Ill. Adm. Code 1702 and thereby making the incidental coal extraction exemption subject to the requirements of newly proposed Part 1702.

The Department is proposing to add a new sentence at the end of subsection (c) in order to clarify that, unless otherwise specified, the referenced rules apply to both coal exploration and surface coal mining and reclamation operations regardless of whether a permit is required. The amendments serve to make the Department's rules consistent with OSMRE's counterpart rules at 30 CFR 700.11.

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The Department is also proposing to change the dates referencing statutory and regulatory provisions in subsections (a)(3) and (4) and subsection (c) to reflect the latest versions of such statutes and regulations.

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Comments must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

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C) Reporting, bookkeeping or other procedures required for compliance:
None

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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NOTICE OF PROPOSED AMENDMENT(S)

TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1700
GENERAL

Section

- 1700.11 Applicability
- 1700.12 Petitions to Initiate Rulemaking
- 1700.13 Notice of Citizen Suits
- 1700.14 Availability of Records
- 1700.15 Computation of Time
- 1700.16 Fees and Forfeitures
- 1700.17 Administration
- 1700.18 Advisory Council on Reclamation

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9347; amended at 11 Ill. Reg. 8051, effective July 1, 1987; amended at 14 Ill. Reg. 11795, effective January 1, 1991; amended at _____ Ill. Reg. _____, effective _____.

Section 1700.11 Applicability

- a) This Part The requirements of 62 Ill. Adm. Code 1700-1850 applies apply to all coal exploration and surface coal mining and reclamation operations, except:

- 1) The extraction of coal by a landowner or lessee for the landowner's or lessee's own noncommercial use from land owned or leased by him or her where two hundred and fifty (250) tons or less of coal are removed in any twelve (12) consecutive months. Noncommercial use does not include the extraction of coal by one (1) unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;
- 2) The extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the total mineral tonnage mined for purposes of commercial use or sale in accordance with 62 Ill. Adm. Code 1702.---(Section 1-06-of-the-Surface-Coal-Mining Land-Conservation-and-Reclamation-Act)---(Ill.---Rev.---Stat. 1987, ch.---96-1/2, par.---7901-06(b));

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- 3) Coal exploration on lands subject to the requirements of 43 CFR 3480-3487 (19869); and
- 4) The extraction of coal on Federal lands except to the extent provided under a cooperative agreement with the United States. Section 1.06 of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 19879, ch. 96 1/2, par. 7901.06(d)).

b) The Illinois Department of Mines and Minerals (Department) shall, within sixty (60) days of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under subsection (a). The Department shall, within thirty (30) days of receipt of a request for exemption under subsection (a), publish notice of the request in a newspaper of general circulation in the area of the proposed exempted operation and send the request to interagency members. Prior to the time a determination is made, any person may submit, and the Department shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who has made a complete and accurate request for an exemption and relied upon the determination shall not be cited for violations which occurred prior to the date of the reversal.

c) The requirements of 62 Ill. Adm. Code 1800 through 1850 (the permanent program regulations) apply to all surface coal mining and reclamation operations for which the surface coal mining operation is required to obtain a permit under the Surface Coal Mining Land Conservation and Reclamation Act (the State Act) (Ill. Rev. Stat. 19879, ch. 96 1/2, pars. 7901.01 et seq.) on and after February 1, 1983. 62 Ill. Adm. Code 1815 and 1840 through 1846 apply to both coal exploration operations and surface coal mining and reclamation operations regardless of whether a permit is required, except as otherwise specified in those rules.

d) Existing structures

- 1) Each structure used in connection with a coal exploration or surface coal mining and reclamation operations shall comply with the performance standards and the design requirements of the permanent program regulations except that:

A) The Department shall exempt an existing structure which meets the performance standards of the permanent program

regulations but does not meet the design requirements of the permanent program regulations from meeting those design requirements. The Department shall grant this exemption as part of the permit application process after both obtaining the information 62 Ill. Adm. Code 1780.12 or 1784.12 require and after the Department makes the findings required in 62 Ill. Adm. Code 1773.15(c)(6) and;

B) If a performance standard in 62 Ill. Adm. Code 280 (interim program regulations) is at least as stringent as the comparable performance standard of the permanent program regulations, an existing structure which meets the performance standards of the interim program regulations shall be exempted by the Department from meeting the design requirements of the permanent program regulations. The Department will grant this exemption as part of the permit application process after obtaining the information 62 Ill. Adm. Code 1780.12 or 1784.12 require and after the Department makes the findings required in 62 Ill. Adm. Code 1773.15(c)(6).

2) The exemptions provided in subsections (d)(1)(A) and (d)(1)(B) shall not apply to:

A) The requirements for existing and new waste piles used either temporarily or permanently as dams or embankments; and

B) The requirements to restore the approximate original contour of the land.

3) The permittee shall modify or reconstruct an existing structure which meets a performance standard of the interim program regulations which is incompatible with the permanent program regulations to meet the design standard of the permanent program regulations, pursuant to 62 Ill. Adm. Code 1773.15(c)(6), 1780.12 and 1784.12.

4) The permittee shall modify or reconstruct an existing structure which does not meet the performance standards of the interim program regulations and which the applicant proposes to use in connection with a coal exploration or surface coal mining and reclamation operation to meet the design standards of the permanent program regulations prior to issuance of the permit.

e) Effective dates

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- 1) Any person conducting coal exploration on or after February 1, 1983, shall either file a notice of intention to explore or obtain approval of the Department, as required by 62 Ill. Adm. Code 1772.
- 2) Coal exploration performance standards in 62 Ill. Adm. Code 1815 apply after August 3, 1982.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

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NOTICE OF PROPOSED AMENDMENT(S)

- 1) The Heading of the Part: General Definitions
- 2) Code Citation: 62 Ill. Adm. Code 1701
- 3) Section Number: Proposed Action:
1701.Appendix A Amended
- 4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:

On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17. One of the inconsistencies identified by OSMRE was the Department's lack of a definition of "road." The Department was instructed to adopt a definition no less effective than the federal rule.

Additionally, the Department has identified statutory citations throughout Section 1701.Appendix A which must be amended to reflect proper citation form.

The following discussion describes the proposed amendments of Part 1701 in response to OSMRE's directive and agency concerns.

Section 1701.Appendix A sets forth the Department's general definitions. The proposed addition of "road" to Section 1701.Appendix A serves to make the Department's regulations consistent with the definitions in the OSMRE counterpart regulation, 30 CFR 701.5.

The proposed amendments to statutory citations throughout Section 1701.Appendix A serve to correct the dates within such citations. In addition, clerical errors have been corrected throughout the section.

6) Will this proposed rule replace an emergency rule currently in effect?
No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will

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NOTICE OF PROPOSED AMENDMENT(S)
TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS
PART 1701
GENERAL DEFINITIONS

Section
1701.5 Definitions
APPENDIX A Definitions

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4932; amended at 11 Ill. Reg. 8075, effective July 1, 1987; amended at 14 Ill. Reg. 11800, effective January 1, 1991; amended at ____ Ill. Reg. ____, effective ____.

Section 1701.APPENDIX A Definitions

As used in 62 Ill. Adm. Code 1700 - 1850, the following terms have the specified meanings, except when another meaning is given:

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid - forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weather processes, form acids that may create acid drainage.

"Act or Federal Act" means the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. (30 U.S.C. 1201 et seq.).

"Adjacent area" means the area located outside the permit area, or shadow area, where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations.

"Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

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have no impact on local units of government.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
Comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991 at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

- 12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991
- B) Types of small businesses affected: This rulemaking does not affect small businesses.
- C) Reporting, bookkeeping or other procedures required for compliance: None
- D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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"Affected area" means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means: any water or surface land upon which those activities are conducted or located.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Applicant" means any person seeking a permit; permit revision; renewal; or transfer, assignment or sale from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the Department under these regulations for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"APPROXIMATE ORIGINAL CONTOUR" MEANS THAT SURFACE CONFIGURATION ACHIEVED BY BACKFILLING AND GRADING OF THE MINED AREAS SO THAT THE RECLAIMED AREA, INCLUDING ANY TERRACING OR ACCESS ROADS, CLOSELY RESEMBLES THE GENERAL SURFACE CONFIGURATION OF THE LAND PRIOR TO MINING AND BLENDS INTO AND COMPLIMENTS THE DRAINAGE PATTERN OF THE SURROUNDING TERRAIN, WITH ALL HIGHWALLS, AND SPOIL PILES AND COAL REFUSE PILES ELIMINATED. Permanent water impoundments may be permitted where the Department has determined that they comply with 62 Ill. Adm. Code 1816.49 and 1816.56, 1816.133 or 1817.49, 1817.56 and 1817.133. Section 1.03(a)(2) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 19879, ch. 96 1/2, par. 7901.03(a)(2)).

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for specific use.

"Article" means an article of the State Act.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the cliff or highwall and transporting the coal along an auger bit to the surface.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess

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of requirements set by 62 Ill. Adm. Code 1816.42; and minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 62 Ill. Adm. Code 1816 and 1817.

"Boxcut" means the first open cut resulting in the placing of overburden on unmined land adjacent to the initial pit.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-84 found at pp. 247-252 in Vol 5.05 of the Annual Book of ASTM Standards published by the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

"Coal exploration" means the field gathering of: surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 62 Ill. Adm. Code 1700 - 1850.

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the area upon which such activities occur.

"Coal processing or coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops and

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other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for functions of community groups; used for an educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the Department determines contains all information which the State Act and 62 Ill. Adm. Code 1700 - 1850 require.

"Consolidated material" means materials of sufficient hardness or stability to resist weathering so as to inhibit erosion or sloughing.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

the proposed operation;

all existing operations;

any operation for which a permit application has been submitted to the Department.

"Darkened surface soil" means mineral horizons formed at or adjacent to the surface of the soil which are higher in organic matter content, and

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visibly darker in color than the immediately underlying horizons.

"Department" means the Illinois Department of Mines and Minerals, or its successor.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director of the Department.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by 62 Ill. Adm. Code 1800 is released.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highway and a valley floor.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means

any person employed by the Department who performs any function or duty under the Act; and
advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the Department under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

"Ephemeral stream" means a stream which meets both requirements:

It flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and

It has a channel bottom that is always above the local water table.

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"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided, the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 62 Ill. Adm. Code 1816.102(d) and 1817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure used in connection with surface coal mining and reclamation operations for which construction began prior to June 1, 1982.

"Federal Director" means the Director of the Federal Office of Surface Mining Reclamation and Enforcement.

"Final cut" means the last pit created in a surface-mined area.

"Fragile lands" means geographic areas containing important natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 7.01 of the State Act (Ill. Rev. Stat. 19879 ch. 96 1/2, par. 7907.01) and 62 Ill. Adm. Code 1761.11, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Gravity discharge" means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aboveground parts of vegetation and by the litter that is produced naturally on site.

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"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"High capability land" means land not meeting the definition of prime farmland or land exempted in accordance with 62 Ill. Adm. Code 1785.17 where the Department determines the following three facts are present together:

The land is capable of being reclaimed for row-crop agricultural purposes;

The land is suitable for row-crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land prior to mining (all soil types in capability Classes I, II, III and those soil types in capability Class IV with slopes of five (5) percent or less), as set forth in Land-Capability Classification, Agriculture Handbook No. 210, published by the U.S. Department of Agriculture, Soil Conservation Service in 1973; and the optimum future use of the land is for row-crop agricultural purposes.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remaining permit area.

"Higher or better uses" means post-mining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

"Historically used for cropland" means:

Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease, or option, of the lands for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations;

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Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration that the permit area is clearly cropland but falls outside the specific five (5)-year-in-ten (10) criterion, in which case the regulations for prime farmland shall be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means important historic, cultural, and scientific areas that could be damaged or be destroyed by surface coal mining operations. Examples of historic lands include archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent danger to the health and safety of the public" means THE EXISTENCE OF ANY CONDITION OR PRACTICE, OR ANY VIOLATION OF A PERMIT OR OTHER REQUIREMENTS OF THE STATE ACT IN A SURFACE COAL MINING AND RECLAMATION OPERATION, WHICH COULD REASONABLY BE EXPECTED TO CAUSE SUBSTANTIAL PHYSICAL HARM TO PERSONS OUTSIDE THE PERMIT AREA BEFORE THE CONDITION, PRACTICE, OR VIOLATION CAN BE ABATED. A REASONABLE EXPECTATION OF DEATH OR SERIOUS INJURY BEFORE ABATEMENT EXISTS IF A RATIONAL PERSON, SUBJECTED TO THE SAME CONDITION OR PRACTICE GIVING RISE TO THE PERIL, WOULD AVOID EXPOSURE TO THE DANGER DURING THE TIME NECESSARY FOR ABATEMENT. Section 1.03(a)(7) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1989, ch. 96 1/2, par. 7901.03(a)(7)).

"Impounding structure" means a dam, embankment, or other structure used

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to impound water, slurry, or other liquid or semi-liquid material.

"Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

"In situ processes" means activities conducted in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Institute" means the Department of Energy and Natural Resources or such other agency as designated by the Director in accordance with Section 7.03 of the State Act.

"Interagency Committee" means the Interagency Committee on Surface Mining Control and Reclamation Section 1.05 of the State Act created.

"Intermittent stream" means:

- A stream or reach of a stream that drains a watershed of at least one (1) square mile; or
- A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment in violation of the State Act or these regulations that cannot be corrected by actions of the applicant.

"Land capability" means the soils' premining capabilities based on the United States Department of Agriculture, Soil Conservation Service classification system as found in Agriculture Handbook No. 210, Land-Capability Classification, (published in 1973) as interpreted from the soils map for sustained production of commonly cultivated crops or for the production of permanent vegetation.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in

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combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department in accordance with 62 Ill. Adm. Code 1780.23.

"Crop/land" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by the livestock or occasionally cut and cured for livestock feed.

"Grazingland" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

"Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

"Residential" means land used for single- and multiple-family housing, mobile home parks, and other residential lodgings.

"Industrial/Commercial" means land used for:

Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities.

Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

"Recreation" is land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

"Fish and wildlife habitat" is land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Developed water resources includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

"Undeveloped land or no current use or land management" includes land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"MINING OPERATIONS OR SURFACE COAL MINING OPERATIONS" MEANS BOTH SURFACE MINING OPERATIONS AND UNDERGROUND MINING OPERATIONS. Section 1.03(a)(11) of the Surface Coal Mining, Land Conservation and Reclamation Act. (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7901.03(a)(11)).

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"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at one hundred and five degrees (105° C).

"MSHA" means the Mine Safety and Health Administration of the United States Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Noxious plants" means any plant species listed as a "noxious weed" under regulations authorized by the Illinois Noxious Weed Law (Ill. Rev. Stat. 1987, ch. 5, pars. 951 et seq.); any plant species whose seed is listed as a "prohibited (primary) noxious weed" or "restricted" (secondary) noxious weed" or "weed seeds" under regulations authorized by the Illinois Seed Law (Ill. Rev. Stat. 1987, ch. 5, pars. 401 et seq.); or any plant which the Department of Agriculture has declared a pest under the Illinois Pesticide Act. (Ill. Rev. Stat. 1987, ch. 5, pars. 801 et seq.)

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation. Office means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

"Operator" means any person engaged in coal mining who removes or intends to remove more than two hundred and fifty (250) tons of coal from the earth or from coal refuse piles by mining within twelve (12) consecutive calendar months in any one location.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Perennial stream" means a stream that flows continuously during all of the calendar year or part of a stream that flows continuously during all of the calendar year. The stream or part of a stream flows continuously

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as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 - 1850, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means those decisions or actions, which if an employee performed or did not perform would affect the programs under the State Act.

"Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Department and other appropriate State and Federal agencies.

"Permanent impoundment" means an impoundment which the Department approved and, if required, is approved by other State and Federal agencies for retention as part of the post-mining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations which the Department issues pursuant to the State program.

"Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Department. This area shall include all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit indicated on the approved map which the operator submitted with the operator's application and which is required to be bonded under 62 Ill. Adm. Code 1800 and where the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided, that areas adequately bonded under another valid permit may be excluded from a permit area. The permit area excludes the area defined in these regulations as the shadow area.

"Permit term" means THE PERIOD DURING WHICH THE PERMITTEE MAY ENGAGE IN MINING AND RECLAMATION OPERATIONS UNDER THE PERMIT. Section 1.03(a)(18) of the Surface Coal Mining Land Conservation and Reclamation Act. (Ill. Rev. Stat. 19879, ch. 96 1/2, par. 7901.03(a)(18)).

"Permittee" means a person holding or required by the State Act or these regulations to hold a permit to conduct surface coal mining and reclamation operations issued by a Department pursuant to a State program.

"Person" means an individual, Indian tribe when conducting surface coal

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mining and reclamation operations on non-Indian lands, general partnership, limited partnership, business trust association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization or any agency, unit, or instrumentality of Federal, State or local government including any publicly-owned utility or publicly-owned corporation of Federal, State or local government.

"Person having an interest which is or may be adversely affected" or "Person with a valid legal interest" shall include any person:

Who uses any resources of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or
Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

"Placeland" means undisturbed land before any mining activity.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

"Previously mined area" means land that had been mined before August 3, 1977.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (43 Fed. Reg. 4031 (1978)) and which have historically been used for cropland as that phrase is defined above.

"Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface and mineral estates within the permit area and the mineral estate within the shadow area.

"Public building" means any structure that is owned or leased and principally used by a public government agency for public business or meetings.

"Public office" means a facility under the control of a governmental entity which is open to public access on a regular basis during

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reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any Federal, State, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

"Publicly-owned park" means a public park that is owned by a Federal, State or local governmental entity.

"Public road" means a road which has been designated as a public road pursuant to the law of the jurisdiction in which it is located; which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; for which there is substantial (more than incidental) public use; and which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Qualified registered professional engineer" means a civil engineer, mining engineer, environmental engineer or general engineer meeting the requirements of Section 9 of The Illinois Professional Engineering Act. (Ill. Rev. Stat. 1987, ch. 111, par. 5112).

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the re-mining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions which these regulations require to restore mined land to a post-mining land use which the Department has approved. These actions do not include subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability.

"Recurrence interval" means the interval of time in which a precipitation

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event is expected to occur once, on the average. For example, the ten (10)-year, twenty-four (24)-hour precipitation event would be that twenty-four (24)-hour precipitation event expected to occur on the average once in ten (10) years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by Department - approved crop production methods. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regional director" means Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement or Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement's representative.

"Regulatory program" means Illinois' permanent regulatory program which the Office of Surface Mining Reclamation and Enforcement approved and set forth in 30 CFR 913.1-913.16 (1986). 30 CFR 913.1-913.16 do not include any subsequent amendments or editions.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

"Responsible land management" means that combination of preparation, maintenance, fertilization and tilling of land capable of producing row crops which would be practiced by a person in the business of producing row crops on unmined land in the same region on the same, or similar, soil type as the mined land being managed, which practices can reasonably be expected to continue after mining and reclamation are completed, as determined by the Department.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing

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or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces.

"Secretary" means the Secretary of the Interior or the Secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Shadow area" means any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above and below the coal that are protected by the State Act that may be adversely impacted by underground mining operations including impacts of subsidence.

"Significant forest cover" means an area where the plant community consists predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air or water resources" means:

An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life;
An environmental harm is imminent if a condition, practice, or violation exists which:

Is causing such harm; or
May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 8.06(c) of the State Act. (Ill. Rev. Stat. 1987, ch. 96 1/2, par. 7908.06(c)).

An environmental harm is significant if that harm is appreciable and not immediately repairable.

"Siltation structure" means a device, or devices, used to remove, collect or otherwise control runoff so that resulting outflow will meet applicable effluent standards.

"Slope" means average inclination of a surface measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

A horizon. The uppermost mineral layer, often called the surface soil or topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from the underlying B horizon in the same sequence by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B horizon. The layer that typically is immediately beneath the A and E horizons and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 62 Ill. Adm. Code 1785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Act" means the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1987, ch. 96 1/2, pars. 7901.01 et seq.)

"State regulatory program" means the Illinois program which the Secretary approved on June 1, 1982 pursuant to 30 CFR 732.1 through 732.15.

"Steep slope" means any slope of more than twenty (20) degrees or such lesser slope as the Department may designate after consideration of such regional characteristics as soil and climate.

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"Substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place described in the above example, without existing mining facilities, are not included. The above example, are not sufficient to constitute substantial legal and financial commitments.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over the coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface coal mining and reclamation operations", or "mining and reclamation operations", means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations".

"Surface coal mining operations", or "mining operations" means: Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine-site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed sixteen and two-thirds (16 2/3)

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per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Federal Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

The areas upon which the activities described in subsection (a) occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities, all haulage roads, excavation, workings, impoundments, dams, embankments, spoil banks, dump, rockpiles, tailings, holes or depressions, repair areas, culm banks, tailings, holes or depressions, repair areas, storage areas, packing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"SURFACE MINING OPERATIONS" MEANS ACTIVITIES CONDUCTED ON THE SURFACE OF LANDS IN CONNECTION WITH A SURFACE COAL MINE OR SURFACE OPERATIONS. SUCH ACTIVITIES INCLUDE EXCAVATION FOR THE PURPOSE OF OBTAINING COAL INCLUDING SUCH COMMON METHODS AS CONTOUR, STRIP, AUGER, MOUNTAIN TOP REMOVAL, BOX CUT, OPEN PIT, AND AREA MINING, COAL RECOVERY FROM COAL WASTE DISPOSAL AREAS, THE USE OF EXPLOSIVES AND BLASTING, AND IN SITU DISTILLATION OR RETORTING, LEACHING OR OTHER CHEMICAL OR PHYSICAL PROCESSING, AND THE CLEANING, CONCENTRATING, OR OTHER PROCESSING OR PREPARATION, LOADING OF COAL AT OR NEAR THE MINE SITE; AND THE AREAS ON WHICH SUCH ACTIVITIES OCCUR OR WHERE SUCH ACTIVITIES DISTURB THE NATURAL LAND SURFACE. SUCH AREAS INCLUDE ANY ADJACENT LAND THE USE OF WHICH IS INCIDENTAL TO ANY SUCH ACTIVITIES, ALL LANDS AFFECTED BY THE CONSTRUCTION OF NEW ROADS OR THE IMPROVEMENT OR USE OF EXISTING ROADS TO GAIN ACCESS TO THE SITE OF SUCH ACTIVITIES AND FOR HAULAGE, AND EXCAVATIONS, WORKINGS, IMPOUNDMENTS, DAMS, REFUSE BANKS, DUMPS, STOCKPILES, OVERBURDEN PILES, SPOIL BANKS, CULM BANKS, TAILINGS, HOLES OR DEPRESSIONS, REPAIR AREAS, STORAGE AREAS, PROCESSING AREAS, SHIPPING AREAS AND OTHER AREAS UPON WHICH ARE SITED STRUCTURES, FACILITIES, OR OTHER PROPERTY OR MATERIALS ON THE SURFACE, RESULTING FROM OR INCIDENT TO SUCH ACTIVITIES. Section 1.03(a)(2a) of the Surface Coal Mining Land Conservation and Reclamation Act (111. Rev. Stat. 19872, ch. 96 1/2, par. 7601.03(a)(24)).

"Suspended solids or nonfilterable residue, expressed as milligrams per liter", means any materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and

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reclamation operations and which the Department has not approved to remain after reclamation.

"Temporary impoundment" means an impoundment which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

"Ton" means two thousand (2000) pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

"Toxic - forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to living organisms or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill or injure, or impair living organisms commonly present in the area that might be exposed to it.

"Transfer, assignment or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit which the Department issued.

"Underground development waste" means waste rock mixtures resulting from development of areas for underground mining activities.

"Underground Mining Activities" means a combination of:
Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and
Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"UNDERGROUND MINING OPERATIONS" MEANS THE UNDERGROUND EXCAVATION OF COAL; AND
SURFACE OPERATIONS INCIDENT TO THE UNDERGROUND EXTRACTION OF COAL, SUCH AS CONSTRUCTION, USE, MAINTENANCE, AND RECLAMATION OF ROADS.

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ABOVE-GROUND REPAIR AREAS, STORAGE AREAS, PROCESSING AREAS, SHIPPING AREAS, AREAS ON WHICH ARE SITED SUPPORT FACILITIES INCLUDING HOIST AND VENTILATING DUCTS, AREAS USED FOR THE STORAGE AND DISPOSAL OF WASTE, AND AREAS ON WHICH MATERIALS INCIDENT TO UNDERGROUND MINING OPERATIONS ARE PLACED; AND
UNDERGROUND OPERATIONS INCIDENT TO UNDERGROUND EXCAVATION OF COAL, SUCH AS UNDERGROUND CONSTRUCTION, OPERATION, AND RECLAMATION OF SHAFTS, ADITS, UNDERGROUND SUPPORT FACILITIES, IN SITU PROCESSING, AND UNDERGROUND MINING, HAULING, STORAGE, OR BLASTING. SECTION 1.03(a) (26) OF THE SURFACE COAL MINING LAND CONSERVATION AND RECLAMATION ACT (111. Rev. Stat. 1989⁹, ch. 96 1/2, par. 7901.03(a) (26)).

"UNWARRANTED FAILURE TO COMPLY" MEANS THE FAILURE OF A PERMITTEE TO PREVENT THE OCCURRENCE OF ANY VIOLATION OF THE OPERATOR'S PERMIT OR ANY REQUIREMENT OF THE STATE ACT DUE TO INDIFFERENCE, LACK OF DILIGENCE, OR LACK OF REASONABLE CARE, OR THE FAILURE TO ABATE ANY VIOLATION OF SUCH PERMIT OF THE STATE DUE TO INDIFFERENCE, LACK OF DILIGENCE, OR LACK OF REASONABLE CARE. SECTION 1.03(a) (27) OF THE SURFACE COAL MINING LAND CONSERVATION AND RECLAMATION ACT (111. Rev. Stat. 1989⁹, ch. 96 1/2, par. 7901.03(a) (27)).

"Valid existing rights" means:

Except for haul roads, that a person possesses valid existing rights for an area protected under Section 7.01 of the State Act (111. Rev. Stat. 1989⁹, ch. 96 1/2, par. 7907.01) on August 3, 1977, if the application of any of the prohibitions contained in that Section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article 1, Section 15 of the Illinois Constitution of 1970 or both.

For haul roads

A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977; or at the time of the designation of an area, as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, before the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in Section 7.01 of the State Act, or
Any other road in existence as of August 3, 1977, at the time of the designation of an area as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of coming into existence within the prohibited distance of a structure, road, cemetery or other activity listed in Section 7.01 of the State Act.

Where an area comes under the protection of Section 7.01 of the State Act after August 3, 1977, valid existing right shall be found if:

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On the date the protection comes into existence, a validly authorized surface coal mine operation exists on that area; or The prohibition caused by Section 7.01 of the State Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article 1, Section 15 of Illinois Constitution of 1970 or both.

Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon Illinois case law concerning interpretation of documents conveying mineral rights or, where Illinois case law is lacking, upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than twenty (20) degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

"Violation notice" means any notification, by letter, memorandum, legal or administrative pleading, or other written communication, from a governmental entity, telling of a violation of law.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Willful violation" means a deliberate act or omission which violates the State Act, these regulations, or any permit condition which the State Act requires.

(Source: Amended at _____ Ill. Reg. _____, effective _____)

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1) The Heading of the Part: Permanent Program Performance Standards--Surface Mining Activities

2) Code Citation: 62 Ill. Adm. Code 1816

Section Number:	Proposed Action:
1816.49	Amended
1816.68	Amended
1816.84	Amended
1816.111	Amended
1816.116	Amended
1816.117	Amended
1816.150	Amended
1816.151	New Section
1816.APPENDIX A	Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:

On August 29, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE), by final rule, instructed the Illinois Department of Mines and Minerals (Department) to submit proposed amendments designed to correct defects identified in Illinois' rules. See 55 Fed. Reg. 35301 (August 29, 1990).

On September 20, 1989, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under the Surface Coal Mining Land Conservation and Reclamation Act. Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.

The following discussion describes the Department's proposed amendments to Part 1816 in response to these OSMRE directives and agency concerns.

Section 1816.49 sets forth the Department's performance standards for temporary and permanent impoundments constructed to facilitate surface coal mining operations. The proposed amendments to subsection (a)(4) provide an alternative to the performance standards in subsection (a)(3) by specifying that compliance with the U.S. Soil Conservation Service's standards satisfies the Department's performance standards for certain impoundments. The proposed amendments will provide a design standard alternative to the current performance standard safety factor

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requirements. Such design standards are specifically provided for at 53 Fed. Reg. 43584 (October 27, 1988). The proposed amendment to subsection (b)(9) corrects a typographical error.

Section 1816.68 sets forth the Department's requirements for compiling and maintaining records of blasting operations. The Department proposes to amend subsection (a) by adding weather conditions to the list of data required to be maintained by operators in their records of blasting operations. The proposed amendment requiring that recorded blast data address weather conditions satisfies OSMRE's directive. See 55 Fed. Reg. 35301 (August 29, 1990).

Section 1816.84 sets forth the Department's requirements regarding coal mine waste impounding structures. The proposed amendment to subsection (b)(2) requires that structures meeting the Mine Safety and Health Administration's (MSHA) criteria set forth in 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour precipitation event, rather than a 100 year, 6-hour precipitation event. The proposed addition of subsection (f) specifies that, for impounding structures constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event must be removed within the 10-day period following each occurrence of that event. The proposed amendments serve to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 816.84.

Section 1816.111 establishes general requirements for revegetation. The proposed amendments to subsections (a)(4) and (b)(1) correct clerical errors. The proposed amendments to subsection (b)(5) correct statutory citations.

Section 1816.116 sets forth the Department's requirements for revegetation success standards. Proposed new subsections (D) and (E) define the extent to which rill and gully repairs can be considered nonaumentative. These proposed amendments are in response to OSMRE's directive in their September 20, 1989 letter to the Department. The proposed amendment to subsection (a)(3) establishes a method for evaluating revegetation success of ground cover, in accordance with OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3)(C) specifies that for revegetation success purposes, measurements may not be taken on cropland during the first year of the responsibility period. The amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3)(D) changes the word

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"stocking" to "population" in order to enhance clarity and avoid confusion.

The first proposed amendment to subsection (a)(3)(E) specifies that for revegetation success purposes, measurements may not be taken on pasture and/or hayland or grazing land during the first year of the responsibility period. The amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed new last sentence of subsection (a)(3)(E) allows one (1) successful year of corn production to be used as a substitute for one (1) successful year of hay production, for revegetation success purposes, on high capability land. The purpose of this amendment is to maximize land use management alternatives on cropland capable land.

The proposed amendment to subsection (a)(4)(A)(iii) corrects the citation to the Department's regulations.

The proposed amendment to subsection (a)(4)(D) limits the use of wheat crops for revegetation success purposes to one (1) year. Limiting wheat crop usage to one (1) year serves to assure that full restoration of prime farmland cropland occurs, as wheat crops do not fully utilize the entire root zone, nor do they grow during moisture deficit years. Thus, although wheat is typically grown on reclaimed areas, it does not reveal the productive capability for all crops and is therefore being limited to one year's usage.

The proposed amendment to subsection (b)(2) changes the deadline date for reclamation activity report submittals to coincide with a related submittal required under Section 1816.116(a)(4).

Section 1816.117 sets forth the Department's requirements for tree and shrub vegetation. The proposed terminology changes in subsection (a) from "stocking" to "population" or "vegetation" enhance clarity and avoid confusion.

The proposed amendment to subsection (a)(1) requires that for revegetation success purposes, survival counts be taken during the last year of the five (5) year responsibility period. Such counts could previously have been taken in the third year of the five (5) year responsibility period. The proposed amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a)(3) responds to OSMRE's September 20, 1989 directive by making clear that ground cover is not required on impervious structures only.

The proposed amendment to subsection (a)(4) corrects a typographical

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error.

Proposed new subsection (a)(5) defines what are considered normal husbandry and conservation practices in accordance with OSMRE's September 20, 1989 letter to the Department.

The proposed terminology changes in subsections (b) and (c) enhance clarity and avoid confusion. The proposed amendment to subsection (c)(2) corrects a typographical error.

Proposed new subsection (d) establishes a technique for measuring the revegetative success of ground cover in accordance with OSMRE's September 20, 1989 directive.

Section 1816.150 sets forth the Department's requirements for the protection of roads. The proposed rewrite of Section 1816.150 establishes classification criteria for mine roads, performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with surface coal mining operations, environmental protection criteria for the design, construction and reconstruction of roads, and requirements for the location and maintenance of roads associated with surface coal mining operations. The proposed rewrite of Section 1816.150 serves to bring Illinois' regulations into conformance with OSMRE's counterpart regulation, 30 CFR 816.150.

Proposed new Section 1816.151 establishes performance standards for primary roads in addition to those contained at Section 1816.150. Specifically, Section 1816.151 establishes performance standards relating to primary road construction and reconstruction certification, safety factor, location, drainage control and surfacing. Proposed new Section 1816.151 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 816.151.

Section 1816 Appendix A sets forth the Agricultural Lands Productivity Formula. The proposed amendments to Soybean Sampling Technique, Drilled or Planted Beans correct a mathematical error in the formula.

The proposed amendments to Wheat Sampling Technique and Oats Sampling Techniques establish a mathematical formula for measuring row crops. The existing formulas provide a measurement for broadcast plantings only.

The proposed amendments to Mixed Hay Sampling Techniques correct a mathematical error in the formula.

- 6) Will this proposed rule replace an emergency rule currently in effect?
No

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- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? Yes
- 9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:
Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect independently owned and operated coal mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have annual sales of less than \$4 million.

C) Reporting, bookkeeping or other procedures required for compliance: Section 1816.68(a) requires mine operators to add wind velocity and direction and weather conditions to the list of data required to be

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maintained in their records of blasting operations.

Section 1816.116(a)(3) requires that vegetative ground cover be measured using the technique set forth in proposed Section 1816.117(d) for revegetation success purposes.

Section 1816.150 establishes more extensive performance standards relating to roads than previously existed.

Section 1816.151 establishes additional performance standards for primary roads and requires professional engineering skills and report certifications.

- D) Types of professional skills necessary for compliance: Professional Engineer

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1816

PERMANENT PROGRAM PERFORMANCE STANDARDS - SURFACE MINING ACTIVITIES

Section	Signs and Markers
1816.11	Casing and Sealing of Drilled Holes: General Requirements
1816.13	Casing and Sealing of Drilled Holes: Temporary
1816.14	Casing and Sealing of Drilled Holes: Permanent
1816.15	Topsoil: General Requirements (Repealed)
1816.21	Topsoil and Subsoil
1816.22	Topsoil: Storage (Repealed)
1816.23	Topsoil: Redistribution (Repealed)
1816.24	Topsoil: Nutrients and Soil Amendments (Repealed)
1816.25	Hydrologic Balance Protection
1816.41	Hydrologic Balance: Water Quality Standards and Effluent Limitations
1816.42	Diversions
1816.43	Hydrologic Balance: Stream Channel Diversions (Repealed)
1816.44	Hydrologic Balance: Sediment Control Measures
1816.45	Hydrologic Balance: Siltation Structures
1816.46	Hydrologic Balance: Discharge of Structures
1816.47	Hydrologic Balance: Acid-Forming and Toxic-Forming Spoil (Repealed)
1816.48	Impoundments
1816.49	Hydrologic Balance: Ground Water Protection (Repealed)
1816.50	Hydrologic Balance: Protection of Ground Water Recharge
1816.51	Capacity (Repealed)
1816.52	Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1816.53	Hydrologic Balance: Transfer of Wells (Repealed)
1816.54	Hydrologic Balance: Water Rights and Replacement (Repealed)
1816.55	Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1816.56	Post-Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
1816.57	Hydrologic Balance: Stream Buffer Zones
1816.59	Coal Recovery
1816.61	Use of Explosives: General Requirements
1816.62	Use of Explosives: Pre-Blasting Survey
1816.64	Use of Explosives: Public Notice of Blasting Schedule
1816.65	Use of Explosives: Surface Blasting Requirements (Repealed)
1816.66	Use of Explosives: Blasting Signs, Warnings, and Access Control
1816.67	Use of Explosives: Control of Adverse Effects

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- 1816.68 Use of Explosives: Records of Blasting Operations
- 1816.71 Disposal of Excess Spoil: General Requirements
- 1816.72 Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills
- 1816.73 Disposal of Excess Spoil: Head-Of-Hollow Fills (Repealed)
- 1816.74 Disposal of Excess Spoil: Durable Rock Fills
- 1816.75 Disposal of Excess Spoil: Preexisting Benches
- 1816.79 Protection of Underground Mining
- 1816.81 Coal Mine Waste: General Requirements
- 1816.82 Coal Processing Waste Banks: Site Inspection (Repealed)
- 1816.83 Coal Mine Waste: Refuse Piles
- 1816.84 Coal Mine Waste: Impounding Structures
- 1816.85 Coal Processing Waste Banks: Construction Requirements (Repealed)
- 1816.86 Coal Processing Waste: Burning (Repealed)
- 1816.87 Coal Mine Waste: Burned Waste Utilization
- 1816.88 Coal Processing Waste: Return to Underground Workings (Repealed)
- 1816.89 Disposal of Noncoal Mine Wastes
- 1816.91 Coal Processing Waste: Dams and Embankments: General Requirements (Repealed)
- 1816.92 Coal Processing Waste: Dams and Embankments: Site Preparation (Repealed)
- 1816.93 Coal Processing Waste: Dams and Embankments: Design and Construction (Repealed)
- 1816.94 Coal Processing Waste: Time and Requirements for Completion of Covering (Repealed)
- 1816.95 Stabilization of Surface Areas
- 1816.97 Protection of Fish, Wildlife, and Related Environmental Values
- 1816.99 Slides and Other Damage
- 1816.100 Contemporaneous Reclamation
- 1816.101 Backfilling and Grading: General Requirements
- 1816.102 Backfilling and Grading: General Grading Requirements
- 1816.103 Backfilling and Grading: Covering or Treating Coal and Acid- and Toxic-Forming Materials (Repealed)
- 1816.104 Backfilling and Grading: Thin Overburden
- 1816.105 Backfilling and Grading: Thick Overburden
- 1816.106 Backfilling and Grading: Previously Mined Areas
- 1816.107 Backfilling and Grading: Steep Slopes
- 1816.111 Revegetation: General Requirements
- 1816.112 Revegetation: Use of Introduced Species (Repealed)
- 1816.113 Revegetation: Timing
- 1816.114 Revegetation: Mulching and Other Soil Stabilizing Practices
- 1816.115 Revegetation: Grazing (Repealed)
- 1816.116 Revegetation: Standards for Success
- 1816.117 Revegetation: Tree and Shrub Stocking Vegetation for Forest Land
- 1816.131 Cessation of Operations: Temporary
- 1816.132 Cessation of Operations: Permanent
- 1816.133 Post-Mining Land Capability

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- 1816.150 Roads: General
- 1816.151 Primary Roads
- 1816.180 Utility Installations
- 1816.181 Support Facilities
- 1816.190 Affected Acreage Map
- APPENDIX A Agricultural Lands Productivity Formula
- EXHIBIT A County Crop Yields by Soil Mapping Unit
- TABLE A Subsoil Adjustments
- TABLE B Soil Variance Codes
- TABLE C County Numbering System
- TABLE D Sample Points Per Crop Acres
- TABLE E Soil Master Files
- TABLE F County Cropped Acreage File

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8224; amended at 9 Ill. Reg. 13310, effective October 10, 1985; amended at 10 Ill. Reg. 8985, effective July 1, 1986; amended at 11 Ill. Reg. 8131, effective July 1, 1987; amended at 14 Ill. Reg. 11830, effective January 1, 1991; amended at 111. Reg. _____, effective _____.

Section 1816.49 Impoundments

- a) The requirements of this subsection apply to both temporary and permanent impoundments.
- 1) Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 (198990) and this Section. 30 CFR 77.216 does not include any later editions or amendments. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Department as part of the permit application insofar as the MSHA informational design standard requirements are duplicative of the requirements of 62 Ill. Adm. Code 1780. In addition, the operator shall submit to the Department any certification issued by MSHA with respect to the design plan.
 - 2) The design of impoundments shall be sealed in accordance with 62 Ill. Adm. Code 1780.25(a) as designed to meet the requirements of this part using current, prudent engineering practices. The qualified registered professional engineer

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- shall be experienced in the design and construction of impoundments.
- 3) Impoundments shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2, or
- 4) The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), are contained in U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs", October 1985. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds", April 1987. Technical Release No. 60 and Practice Standard 378 are hereby incorporated by reference and do not include later editions or amendments.
- 45) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.
- 56) Foundations.
- A) Foundations and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability.
- B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.
- 67) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.
- 78) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

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- 89) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in subsection (b) or (c).
- 910) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments, as evidenced by the placement of a registered professional engineer's seal on the inspection report.
- A) Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be inspected, examined and certified in accordance with 30 CFR 77.216. Annual status reports required under 30 CFR 77.216-4 shall be submitted to the Department within 30 days after the reporting period.
- B) All other impoundments shall be inspected at least weekly during construction and upon completion of construction. The qualified registered professional engineer shall submit to the Department within thirty (30) days after each inspection, a sealed report that the impoundment has been constructed as designed and in accordance with the approved plan and these regulations.
- C) A copy of the reports required in subsections (a)(9)(A) and (B) above, and the examination reports required in subsection (a)(10) below, shall be retained at or near the mine site. The Department may approve reports being retained at a different location if there is no permanent mine office.
- 4011) Impoundments which do not meet the size or other qualifying criteria of 30 CFR 77.216(a) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness or other hazardous conditions. At least one of the quarterly examinations conducted during the calendar year shall be sealed by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and these regulations. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The sealed

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- 3) The water level will be sufficiently stable and be capable of supporting the intended use.
- 4) Final grading will provide for adequate safety and access for proposed water users.
- 5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.
- 6) The impoundment will be suitable for the approved post-mining land use.
- 7) The impoundment perimeter slopes shall be consistent with the intended use of the impoundment, not be steeper than the angle of repose and comply with subsection (a)(3). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

A) Runoff from above the slope shall be diverted to erosion free outlets.

B) Grading of slopes shall be scheduled to be completed at the onset of the most favorable seeding period.

8) Embankment ponds, those having embankment heights of three (3) feet or greater above natural ground elevation, shall have out-slopes of 1v:2h or less and interior slopes to the normal pool elevation of 1v:2h or less.

9) Permanent impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type. Permanent impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil and type.

10) In lieu of the combination principal and emergency spillway requirements of Section 1816.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections

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examination report shall be submitted to the Department within 30 days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 62 Ill. Adm. Code 1800.40. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this subsection, following approval by the Department:

A) Impoundments that are completely incised;

B) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; and

C) Impoundments that do not facilitate mining or reclamation including, but not limited to, sewage lagoons, landscaping ponds, pools or wetlands in replaced stream channels, existing impoundments not yet used to facilitate mining, ephemeral waterbodies, active mining pits and differential settlement pools.

4112) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the Department in the approved permit, based upon the following demonstration:

1) The size and configuration of the impoundment is adequate for its intended purposes.

2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet water quality standards set forth in Section 1816.42, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below water quality standards set forth in Section

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(b)(10)(A) and (b)(10)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (b)(9). The Department shall approve a single open-channel spillway that is:

- A) Of nonerodible construction and designed to carry sustained flows; or
- B) Earth or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

c) Temporary impoundments.

- 1) Temporary impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event or such larger event as may be required by the Department based on factors such as terrain, topography and soil type. Temporary impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

- 2) In lieu of the combination principal and emergency spillway requirements of Section 1816.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections (c)(2)(A) and (c)(2)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (c)(1). The Department shall approve a single open-channel spillway that is:

- A) Of nonerodible construction and designed to carry sustained flows; or
- B) Earth or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 1816.68 Use of Explosives: Records of Blasting Operations

- a) A record of each blast, including seismograph reports, shall be retained by the operator for at least three (3) years and shall be available for inspection by the Department and the public on

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request. The record is to be completed by the end of the work day following the day in which the blast occurred, including the seismograph meter reading, if available, and shall contain the following data:

- 1) Name of the operator conducting the blast;
- 2) Location, date, and time of blast;
- 3) Name, signature, and certification number of the blaster conducting the blast;
- 4) The name of the owner or resident of, and the direction and distance, in feet, to the nearest dwelling, school, church, or commercial, or institutional building either:
 - A) Not located in the permit area; or
 - B) Not owned by the person who conducts the surface mining activities.
- 5) Type of material blasted;
- 6) Number of holes, burden, and spacing;
- 7) Diameter and depth of holes;
- 8) Types of explosives used;
- 9) Total weight of explosives used;
- 10) Weight of explosives used per hole;
- 11) Maximum weight of explosives detonated within any eight (8) millisecond period;
- 12) Maximum number of holes or decks detonated within any eight (8) millisecond period;
- 13) Initiation system;
- 14) Type and length of stemming;
- 15) Type of delay detonator and delay periods used;
- 16) Sketch of the delay pattern, including decking;
- 17) Reasons and conditions for each unscheduled blast;

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- 18) Wind velocity and direction; and
- 19) Weather conditions, including those which may cause possible adverse blasting effects.
- b) Air blast and/or ground vibration recordings, or photographic copies thereof, where required, shall be kept at the mine site office for a period of three (3) years following the date of the blast, and shall be available for inspection by the Department and the public on request. The recordings shall include the following:
- 1) Maximum air blast and/or ground vibration levels recorded;
 - 2) The exact location of the monitoring equipment, and its distance from the blast, and the date and time of the recording;
 - 3) Name of the person and firm making the recording;
 - 4) Name of the person and firm analyzing the recording. The recording shall be signed and dated by the person performing the analysis; and
 - 5) The type of instrument, sensitivity, and calibration signal or certification of annual calibration. When the recordings required at Sections 1816.67(c) and 1816.67(g) are produced via digitized systems, the sampling rate of the digitizer, in samples per second, shall be stated.

(Source: Amended at ____ Ill. Reg. ____, effective ____)

Section 1816.84 Coal Mine Waste: Impounding Structures

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of Section 1816.81.

- a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the Department that the stability of such a structure conforms to the requirements of this Part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Department in accordance with 62 Ill. Adm. Code 1780.25.

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b)

- 1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with Section 1816.49(a) and (c). Such structures may not be retained permanently as part of the approved post-mining land use.
- 2) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of 30 CFR 77.216(a), the combination of principal and emergency spillways shall be able to safely pass the one hundred (100) year, six (6) hour design precipitation event. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event as specified by Department after consideration of factors such as watershed size and characteristics necessary to ensure design in accordance with prudent engineering practices.
- c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion in accordance with Section 1816.47. Inlets shall be protected against blockage.
- d) Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that causes instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of Section 1816.43 and designed to safely pass the runoff from a one hundred (100) year, six (6) hour design precipitation event.
- e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event can be removed within a ten (10) day period.
- f) For an impounding structure constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

(Source: Amended at ____ Ill. Reg. ____, effective ____)

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Section 1816.111 Revegetation: General Requirements

a) The permittee shall establish on regraded areas and on all other disturbed areas except areas where vegetative cover is inconsistent with the approved post-mining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan that is:

- 1) Diverse, effective, and permanent;
- 2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved post-mining land use and approved by the Department;
- 3) At least equal in extent of cover to the natural vegetation of the area; and
- 4) Capable of stabilizing the soil surface from erosion.

b) The reestablished plant species shall:

- 1) Be compatible with the approved post-mining land use;
- 2) Have the same seasonal characteristics of growth as the original vegetation;
- 3) Be capable of self-regeneration and plant succession;
- 4) Be compatible with the plant and animal species of the area; and
- 5) Meet the requirements of the Illinois Noxious Weed Law (Ill. Rev. Stat. 19859, ch. 5, pars. 951 et seq.), The Illinois Seed Law (Ill. Rev. Stat. 19859, ch. 5, pars. 401 et seq.) and the Illinois Pesticide Act (Ill. Rev. Stat. 19859, ch. 5, pars. 801 et seq.)

c) In order to prevent soil erosion, the Department shall grant an exemption to the requirements of subsections (b)(2) and (b)(3) when the reestablished species will achieve a quick-growing, temporary stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

d) When the Department approved a cropland post-mining land use, the permittee shall be exempt from the requirements of subsections (a)(1), (a)(3), (b)(2), and (b)(3). The requirements of 62 Ill. Adm. Code 1823.15 apply to areas identified as prime farmland and those prime farmlands granted an exemption in accordance with 62 Ill. Adm. Code 1785.17(a)(5).

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(Source: Amended at Ill. Reg. _____, effective _____)

Section 1816.116 Revegetation: Standards for Success

a)

- 1) Success of revegetation shall be judged in accordance with Sections 1816.116 and 1816.117.
- 2)

A) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with subsection (a)(2)(C).

B) The period of extended responsibility shall continue for a period of not less than five (5) full years. Vegetation parameters identified in subsection (a)(1) shall equal or exceed the approved success standard set forth in subsection (a)(3).

C) The Department shall approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved post-mining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

D) Rill and gully repair on cropland-capable reclaimed land will not be considered augmentation if an operator has an approved erosion control plan in place in the field pursuant to 62 Ill. Adm. Code 1823.14(g) or 1825.14(f), and shortly after the repair, the Department makes the following determinations:

- i) the area is a minor erosional feature;

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- E) Rill and gully repair on noncropland-capable land will not be considered augmentation if, shortly after the first rainfall event after the repair, the Department makes the following determinations:
- i) the area is a minor erosional feature;
 - ii) the area is small;
 - iii) the erosion is not expected to recur; and
 - iv) the area is stable.
- BE)

- i) In those cases where a permittee augments any high capability cropland areas in order to achieve the revegetation success standards of subsection (a)(3)(C), the permittee shall apply the same or superior augmentation measures to all other high capability lands reclaimed using the same techniques and the five (5) year period of responsibility shall recommence. The Department shall waive augmentation if the other high capability areas have been previously augmented in a similar or superior manner or have met the revegetation success standards for cropland or the permittee can document a minimum of three (3) years of successful woody species establishment for forest products and wildlife habitat land uses as required by Section 1816.117(a). If the woody species have been planted less than three (3) years prior to the augmentation of the high capability cropland areas, the Department shall grant additional time to evaluate the success of the woody species planting.

- ii) The five (5) year period of responsibility shall not recommence on areas where the operator has met the revegetation success standards of subsection (a)(3)(E).

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- iii) If high capability cropland is augmented the Department shall retain sufficient performance bond at the time of phase II performance bond release to ensure the cost of similarly augmenting all other high capability lands, if required, is covered in the remaining bond amount.
- 3) Ground cover, and production, or stacking shall be considered equal to the approved success standard when they are not less than ninety (90) percent of the success standard. The sampling techniques for measuring success shall use a ninety (90) percent statistical confidence interval (i.e., one-sided t test with a 0.10 alpha error). Vegetative ground cover shall be measured using the technique set forth in 62 Ill. Adm. Code 1816.117(d). Standards for success shall be applied in accordance with the approved post-mining land use and, at a minimum, the following conditions:

- A) The vegetative ground cover for areas previously disturbed by mining operations that were not reclaimed to the requirements 62 Ill. Adm. Code 1810 through 1828 and that are reclaimed or otherwise redisturbed by surface coal mining operations, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion;
- B) For areas to be developed for industrial, commercial or residential use less than two (2) years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion;

- C) For areas designated in the approved reclamation plan as cropland, except those cropland areas subject to 62 Ill. Adm. Code 1823.15, success of revegetation of cropland areas shall be determined in accordance with subsection (a)(4). Crop production shall be considered successful if it is ninety (90) percent of that crop production required in subsection (a)(4) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two (2) crop years of a ten (10) year period prior to release of the performance bond, provided crop years do not occur before the fourth year (inclusive) except the first year of the five (5) year responsibility period. During the extended five (5) year responsibility period, erosion from cropland must be minimized using equivalent or better management practices than surrounding unmined cropland. The five

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(5) year responsibility period shall begin after the last year of augmented seeding, fertilizing, or soil treatment and at the time of the planting of the crop(s) to be grown for the productivity showing or crops grown in rotation. Crop production for proof of productivity purposes shall be initiated within ten (10) years after completion of backfilling and final grading;

D) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of revegetation shall be determined on the basis of tree and shrub stocking populations and ground cover. The tree and shrub stocking population and ground cover shall meet the standards described in Section 1816.117; and

E) For areas designated as pasture and/or hayland or grazing land in the approved reclamation plan, except for erosion control devices and other structures (i.e., levees, ditches, waterways, impounding structures, etc.) success of revegetation (tons of grasses and/or legumes per acre) shall be determined in accordance with subsection (a)(4). Productivity shall be considered successful if it is ninety (90) percent of the productivity required in subsection (a)(4) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two (2) crop years of a ten (10) year period prior to release of the performance bond, ~~provided--that--both--production-years--do--not--occur before the fourth year--(inclusive) except the first year of the five (5) year extended responsibility period.~~ Revegetation success shall also be determined in accordance with Section 1816.117 (a)(2). Production for proof of productivity purposes shall be initiated within ten (10) years after completion of backfilling and final grading. On high capability land, the Department shall allow the use of one (1) successful year of corn production as a substitute for one (1) successful year of hay production under this subsection.

4) In order to use the Agricultural Lands Productivity Formula, Section 1816. Appendix A, to determine success of revegetation, the following shall apply;

A) The permittee shall submit annually, by February 15, a one (1) inch equals five hundred (500) feet (1:500) or larger scale drawing or aerial photograph delineating:

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i) Field boundaries, a field numbering scheme and the total acreage for each field which will be cropped to demonstrate proof of productivity for the coming crop year. The Department shall approve such submittal if the information is correct and accurate. Once field boundaries are established in a submittal, the boundaries shall not be changed without recommencing the responsibility period, unless the submittal is amended in accordance with subsection (a)(4)(A)(iii); and

ii) The crop (e.g., hay, wheat, corn, soybeans, sorghum, etc.) which will be grown on each field to demonstrate proof of productivity for the coming crop year.

iii) The permittee may amend its scale drawing in accordance with 62 Ill. Adm. Code §788-12.1774.13(b)(2) until July 15 of the submittal year. Each such amendment shall contain a written explanation of changes from the original submittal and include a map reflecting the changes.

iv) A field is an area of land reclaimed by a single reclamation technique that comprises either high capability land or prime farmland or limited capability pasture land. The size of the field and its boundaries are determined by such factors which include, but are not limited to, contour, non-cropped boundaries and size of farming equipment.

B) Fields identified in subsection (a)(4)(A) to be measured for success of revegetation for cropland shall be planted annually to a single approved crop. The sampling method of Section 1816. Appendix A shall apply. Soil and water conservation practices approved in the permit application including but not limited to grass waterways, diversion ditches, contour grass strips, and sedimentation ponds within the boundaries of a field shall be excluded from the sampling requirements of Section 1816. Appendix A and shall remain vegetated with permanent ground cover species, where appropriate, to conserve soil and water resources. Subject to rulemaking, the Department in cooperation with the Illinois Department of Agriculture may determine if a portion of a field is a representative sample of the entire field when technology has developed to make it possible through physical and chemical

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agronomic testing to demonstrate success of vegetation through soil surveys or when statistically valid sampling procedures are developed for determining success of revegetation based upon cropping and sampling a representative portion of the field.

- C) Adjustments for abnormal growing conditions shall be made if such adjustments are certified by a crop adjuster certified to perform adjustments by the Federal Crop Insurance Corporation. At the request of a permittee, the Department of Agriculture shall make arrangements for such an appraisal or adjustment review. Before any such an appraisal or adjustment shall be arranged, the permittee shall file with the Illinois Department of Agriculture an agreement to pay the full cost of any crop adjustment or appraisal so requested.

- D) The crops to be grown shall include those commonly grown on surrounding unmined cropland such as corn, soybeans, hay, sorghum, wheat, or oats. The Department may approve a hay crop use where this is a common use of unmined cropland in the surrounding area. Prime farmland and other cropland areas must include a minimum of one (1) successful year of corn and if the Department has approved its use a maximum of one (1) successful year each of hay and wheat crops.

- b) The person who conducts surface mining activities shall:

- 1) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Department, to identify if remedial actions are necessary during the applicable period of liability specified in subsection (a); and
- 2) Permittees shall submit by January--1 February 15 of each year a report of reclamation activities conducted during the previous calendar year using forms provided by the Department. Reclamation activities to be reported include but are not limited to crops used in temporary and permanent seedings, grasses and legumes planted, trees and shrubs planted, soil amendments added, and location and type of augmentation activities. The forms shall be submitted with a copy of the approved post-mining land use and capability map depicting the location of such activities. The map shall be planned as a continuous map so the reclamation activities conducted each year may be added and indicated on the map by the dates the activities were conducted.

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(Source: Amended at Ill. Reg. _____, effective _____)
 Section 1816.117 Revegetation: Tree and Shrub Vegetation Stocking for Forest Land

- a) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of vegetation shall be determined on the basis of tree and shrub stocking population and vegetative ground cover. Such parameters are described as follows:

- 1) Trees and shrubs that will be used in determining the success of stocking vegetation and the adequacy of plant arrangement shall have utility for the approved post-mining land use. Tree and/or shrub stocking population shall be considered successful if it meets is--ninety-(90)-percent-of-the-stockings the population required in subsection (b) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) during the last year of the responsibility period. Trees and shrubs counted in determining such success shall be healthy, e.g. not demonstrating abnormal growth, coloring, leaf drop or disease. At the time of bond release such trees and shrubs shall be alive, and shall have been in place for at least three (3) growing seasons, i.e. three (3) years.

- 2) Vegetative ground cover shall not be less than required to achieve the approved post-mining land use and shall be adequate to control erosion.

- 3) Rock-areas; Permanent roads; and surface-water-drainage-ways, parking lots and similar impervious structures on the revegetated area shall not require stocking the planting of trees and shrubs or herbaceous ground cover.

- 4) For purposes of this Section, herbaceous species means grasses, legumes and nonleguminous forbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the combined aboveground parts of vegetation and the litter that is produced naturally on site.

- 5) For purposes of this Section, normal husbandry and conservation practices shall include pruning, disease, pest, vermin and herbaceous vegetation control including mowing, replanting and fill and gully repairs. The replanting of trees and shrubs in areas described in 62 Ill. Adm. Code 1816.116(a)(2)(C) shall be limited to 20% of the original approved planting rate during the first year of the

responsibility period and 10% of the original approved planting rate during the second year of the responsibility period. The repair of rills and gullies shall be limited to those approved as a normal conservation practice under 62 Ill. Adm. Code 1816.116(a)(2)(C).

- b) For areas where woody plants are used for fish and wildlife habitat (including shelter belts), or recreation land uses, the area shall have a minimum stocking population of two hundred and fifty (250) trees or shrubs per acre; where woody plants are used for forest products land uses, the area shall have a minimum stocking population of four hundred and fifty (450) trees or shrubs per acre.
- c) For areas planted to trees or shrubs including wildlife habitat (including shelter belts), recreation, and forest products land uses, the sampling procedure for measuring success-of--stocking populations is described as follows:

1) The permittee shall submit a scale drawing or aerial photograph delineating the area(s) to be sampled and the total number of acres in each area. A one (1) inch equals five hundred (500) feet (1:500) or larger scale shall be used.

2) One of the following circular plot sizes shall be selected by the sample enumerator:

Plot Size/Acres	Radius/Feet
1/160	9.31
1/120	10.75
1/100	11.78
1/90	12.41
1/80	13.17
1/70	14.07
1/60	15.20
1/50	16.65
1/40	18.61
1/30	21.50
1/20	26.33
1/10	37.24
1/5	52.66
1/4	58.88

3) The number of plots needed to sample 2.5 percent of the area will be calculated employing the following formula:

Number of Plots equals 2.5 percent multiplied by Sample Area in acres divided by plot size.

4) Based on the number of plots needed to be sampled and plot size, locate transect lines an equal distance apart throughout the area to be sampled. Position individual plots an equal distance apart along transect lines. Determine the total length of all transect lines combined and then divide by the total number of plots needed to be sampled. When an individual plot is positioned within sixty (60) feet of the boundary of the area to be sampled, the location of the plot shall be moved perpendicular to the transect line until the plot is sixty (60) feet from the boundary of the area to be sampled or the greatest distance possible where sixty (60) feet cannot be achieved.

5) Sample each plot for compliance with subsections (a)(1) and (b) and record live trees and/or shrubs and species.

6) Calculate stocking population levels as follows:

A) Average number of live trees and/or shrubs per plot equals total number of live trees and/or shrubs divided by number of plots; and

B) Number of live trees and/or shrubs per acre equals average number of live trees and/or shrubs per plot multiplied by plot size denominator.

7) Representatives of the Department or the Illinois Department of Conservation shall conduct all sampling.

d) Vegetative ground cover shall be measured by the following technique:

1) Twenty (20) random points shall be identified in the area to be tested.

2) A twenty (20) foot engineer's tape shall be extended directly south of each point. If the tape extends beyond the boundary of the area to be tested or extends into an area where herbaceous ground cover has been controlled with herbicides to minimize competition with woody plants, the tape shall be rotated in ninety (90) degree increments until the entire twenty (20) foot length is within the boundary of the area to be tested or area not treated with the herbicide.

3) A measurement shall be taken at each two tenths (.2) increment directly above or below the tape.

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- 4) Ground cover shall be determined to be present if any vegetation identified in Section 1816.117(a)(4) is measured at the increment.
- 5) A percentage of ground cover shall be established for the area tested by taking the total number of measurements where ground cover was determined to be present.
- 6) If the vegetative ground cover is adequate to control erosion, i.e. absence of rills and gulleys, and sufficient to achieve its approved post-mining land use, the percentage of ground cover determined by this technique shall be deemed successful.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 1816.150 Roads: General

Surface--mining-activities--shall--be-conducted--to--insure-the--construction, maintenance, and postmining-conditions-of-roads--into-and-across-the--site-of-operations--will-control-or-prevent--erosion-and-siltation, pollution-of-water, damage-to-fish-and-wildlife-or-their-habitat,--or-public-or-private-property.

a) Road classification system.

- 1) Each road, as defined in 62 Ill. Adm. Code 1701.Appendix.A, shall be classified as either a primary road or an ancillary road.
- 2) A primary road is any road which is:
- A) Used for transporting coal or spoil;
 - B) Frequently used for access or other purposes for a period in excess of six months; or
 - C) To be retained for an approved post-mining land use.

- 3) An ancillary road is any road not classified as a primary road.

b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

- 1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust

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suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

- 2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;

- 3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

- 4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

- 5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

- 6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

- 7) Use nonacid- and nontoxic-forming substances in road surfacing.

c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size in accordance with current, prudent engineering practices, and any necessary design criteria established by the Department.

d) Location.

- 1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Department in accordance with applicable sections of 62 Ill. Adm. Code 1816.41 through 1816.43 and 1816.57.

- 2) Roads shall be located to minimize downstream sedimentation and flooding.

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e) Maintenance...

- 1) A road shall be maintained to meet the performance standards of this Section in accordance with prudent engineering and maintenance practices.
- 2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.
- f) Reclamation. A road not to be retained under an approved post-mining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:
 - 1) Closing the road to traffic;
 - 2) Removing all bridges and culverts unless approved as part of the post-mining land use;
 - 3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the post-mining land use and revegetation requirements;
 - 4) Reshaping cut and fill slopes as necessary to be compatible with the post-mining land use and to complement the natural drainage pattern of the surrounding terrain;
 - 5) Protecting the natural drainage patterns by installing dikes or cross-drains as necessary to control surface runoff and erosion; and
 - 6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with 62 Ill. Adm. Code 1816.22 and 1816.111 through 1816.117.

(Source: Amended at Ill. Reg. _____, effective _____)
 Section 1816.151 Primary roads Primary roads shall meet the requirements of Section 1816.150 and the additional requirements of this Section.

- a) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Department by a qualified registered professional engineer. The professional engineer shall be experienced in the construction of roads, as evidenced by the placement of a registered professional engineer's seal on the

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report. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

- b) Safety Factor. Each primary road embankment shall have a minimum static factor of 1.3.
- c) Location.
 - 1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.
 - 2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the Department as temporary routes during periods of road construction.

d) Drainage control. In accordance with the approved plan:

- 1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross-drains and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the Department as necessary to ensure proper drainage control design in accordance with prudent engineering practices.
- 2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.
- 3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;
- 4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;
- 5) Natural stream channels shall not be altered or relocated without the prior approval of the Department in accordance with applicable sections of 62 Ill. Adm. Code 1816.41 through 1816.43 and 1816.57; and
- 6) Except as provided in Section 1816.151(c)(2), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other

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structures designed, constructed, and maintained using current, prudent engineering practices. The Department shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

- e) Surfacing. Primary roads shall be surfaced with material approved by the Department as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(Source: Added at Ill. Reg. _____, effective _____)

Section 1816. APPENDIX A Agricultural Lands Productivity Formula

SOIL MASTER FILE

The Soil Master File of the Agricultural Lands Productivity Formula contains a comprehensive list of the soil mapping units currently recorded in Illinois. The Soil Master File provides the soil mapping unit number, common mapping name, and the high level of management yields for corn, soybeans, wheat, oats and mixed hay. Section 1816. Table E is the Soil Master File.

Additional components of the Soil Master File are as follows:

1. County number - identifies soils unique to a county. County number also distinguishes between soils with the same name in different counties but with unique soil properties and yields. County numbers are identified in Section 1816. Table C County Numbering System.
2. Variance code - physical conditions which would cause similar soil types to produce radically different yields. Variance code is explained in Section 1816. Table B Soil Variance Code.
3. Switch code - identifies a point at which a particular soil at a given slope and/or erosion category becomes either a new soil, a complex soil or moves from a favorable to unfavorable subsoil. The alphanumeric switch code is the new slope and erosion code.
4. Subsoil type - either #1 favorable, or #2 unfavorable subsoil condition. Percent of adjustment that will be applied to both the high management yield in subsoil conditions provided in Section 1816. Table A - Subsoil Adjustments.
5. Slope and erosion - this category provides adjusted high management yields for slope and erosion groups for each soil series for each crop in the Agricultural Lands Productivity Formula.

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COUNTY CROPPED ACREAGE FILE

The Agricultural Lands Productivity Formula requires that the number of cropped acres by soil mapping unit be calculated for each county. These calculations are generated by computer using the following formula:

$$\begin{array}{rcl} \text{Total acres per} & & \text{percent of} \\ \text{soil type per} & \times & \text{total acreage} = \text{soil type} \\ \text{county} & & \text{cropped} \end{array}$$

The percent of total acreage cropped per soil type will be provided by County Soil and Water Conservation Districts. Any changes to these figures must be approved by the County Soil and Water Conservation District Board with a certified copy of all changes submitted by August 15 of each year to the Illinois Department of Agriculture.

Section 1816. Table F - County Cropped Acreage File reflects the total acres of each soil type per county, percent of acreage cropped, and the computed figure of total cropped acres by soil type in each county. The "total cropped acres" figures are carried forward to the County Average Yield File.

COUNTY AVERAGE YIELD FILE

The next procedure of the Agricultural Lands Productivity Formula is to equate annual county crop yield data to the soils derived in the "County Cropped Acreage File". Section 1816. Example A and the following paragraphs summarize the procedure for calculating the crop yield for each soil mapping unit.

Column A reflects the soil mapping units as they appear on a county by county basis.

Column B is the number of acres cropped in a county per soil type as recorded in the County Cropped Acreage File. These cropped acreage figures are then added together to give a total number of acres cropped for the county.

Column C is the percent of the acreage represented by each soil type when compared with the total in Column B (Column B = total acres in soil mapping unit times the percent of acres cropped in the county by mapping unit).

The number of acres planted in grain (Column D) is calculated by multiplying the percent of each soil mapping unit in the county (Column C) by the total acres in the county harvested for corn, soybeans, wheat, oats, and mixed hay. (See asterisk in Section 1816. Example A). The purpose of this calculation is to estimate the number of acres harvested from each of the particular soil mapping units. It is assumed that 25% of the total corn,

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soybean, wheat, oat and mixed hay acreage was planted on that particular soil mapping unit. Therefore, the "grain acres" are distributed on the soil mapping units based upon the percent of acres in each soil mapping unit.

Column E is the adjusted yield information for each crop which comes from Section 1816. Table E - Soil Master File.

Column F is a derived high management production (Figure) obtained by multiplying the figures in Column D times the figures in Column E. This production figure will normally exceed actual production because the high level management yield is used. The purpose of using the high management production is to derive a weighted average high management yield; which is, the total high management production (Column F) divided by the total grain acres in the county (Column D). The weighted high management yield figure will be used to derive a "factor" as described below:

$$\text{Factor} = \frac{\text{Official County Crop Yield}}{\text{Weighted High Management Yield}}$$

Column G results from the multiplication of the above factor times the high level management yield of each soil mapping unit (Column E). The result is a yield which represents the average yield in either bushels per acre or tons per acre in the county for that year and crop.

PERMIT SPECIFICS
YIELD STANDARD

After completing calculations for the projected yield of the test year in question, a yield standard for each permit area must be calculated. The yield standard, which is also applicable to high capability standards of Section 1816.116(a)(3)(C) will be calculated in the following manner:

The number of prime farmland acres in each soil mapping unit will be divided by the total prime farmland acres in the mine permit area to obtain a weighted proportion for each soil type. The weighted proportion of each prime farmland soil mapping unit in the permit area, relative to the total prime farmland acres in the permit area, will be multiplied times the projected yield for the pre-mining soil types. The weighted final yield for each prime farmland soil type in a mining permit area will be added together and the total becomes the yield requirement for the permit area.

AGRICULTURAL LANDS PRODUCTIVITY FORMULA
SAMPLING METHOD

The sampling methodology that the Illinois Department of Agriculture or the Illinois Department of Mines and Minerals will use to gather the data needed to determine if productivity has been returned to reclaimed mine land is summarized below for corn, soybeans, wheat, oats, sorghum, and mixed hay.

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This sampling methodology requires an operator to submit by February 15 of each year, a scale drawing or aerial photo delineating specific field boundaries and type of crop which is to be sampled for proof of productivity for the current crop year. Each scale drawing and photo submitted shall include a field numbering scheme and the total acreage for each field on which sampling is being requested. In addition, the scaled drawing shall be no less than 1 inch equals 500 feet (1:500) or greater than 1 inch equals 100 feet (1:100). The February 15 annual submittal may be amended by the operator until July 15. Each such amendment shall contain a written explanation of changes from the original submittal and an aerial photograph or scaled drawing reflecting the corrected sampling submittal.

The determination of sample points within a specific field will be made on the basis of a grid overlay scheme with the location of sample points on the grid randomly generated by computer. An intentional bias of fifty feet (50') will be introduced to all field boundaries to remove the potential that sampling points may fall in turn around areas, or areas where contiguous soil reconstruction may cause field boundaries to not be indicative of whole field productivity.

The minimum acceptable number of samples to be taken relative to field size is shown in Section 1816. Table D sample points per crop acres, with fields of four acres or less to be sampled in their entirety with yields determined by harvest weight. Sample selections will take place using the following guidelines.

The Illinois Department of Agriculture may elect to increase the minimum number of acceptable sample points per field acres. Some factors which will be considered in determining whether to increase the number of sample points are as follows, but not limited to:

1. Operator requests additional sample points for specific fields.
2. The use of different hybrids in one field.
3. Contour changes within one field which would alter a yield.
4. A coefficient of variation greater than 15%.

The Department shall request the operator to verify yields by harvest weight (e.g., scale tickets) for reasons, including but not limited to:

1. Verification of random sampling results.
2. Availability of sample enumerators.
3. Backlog of sample processing at the IDOA lab.

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In each such case, the certified harvest yield adjusted, to optimum moisture content, will become the comparison yield for the Agricultural Lands Productivity Formula target yield.

CORN SAMPLING TECHNIQUE

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample locations.

Step 3 - After taking the last of the required paces to the first sampling point, place a stake immediately adjacent to the closest corn stalk to the toe of your shoe. Measure 15 feet of the corn row starting at the first stake and placing a second stake at the 15 foot mark. Move to the next adjacent corn row, measure and stake a second 15 foot section in the same manner as the first row. One sample unit will equal two fifteen foot corn row sections.

Step 4 - Determine the 3rd and 4th ears of the first row starting with the first stalk of corn. Tag these ears with a rubber band. If there are less than four ears in the first row, the last ear and the next to last ear should be tagged. In the case where a stalk has more than one ear, count the top ear first. (Note: An ear of corn is defined as a cob having at least one kernel. The tagged ears will be used to determine the moisture content, and at least 250 grams of grain are needed. If it does not appear that the 3rd and 4th ears will supply 250 grams of grain for a moisture test, then the 5th, 6th and/or 7th ear should be included until at least 250 grams of corn is collected).

Step 5 - Husk all ears in Row 1 within the fifteen foot segment of the sample. Husk the ears and snap the shank off as cleanly as possible. Be sure to include any ears tagged for moisture testing.

Step 6 - Weigh the husked ears using a balance scale - obtain field weight in pounds.

Step 7 - After weighing, put ears tagged for moisture testing into polyethylene bags and seal. Mark the bag with the appropriate field number (as supplied by the mine operator), and sample identification number.

Step 8 - Measure on a perpendicular line from the stalks in row one (1)

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to the stalks in row five (5). Divide this measured distance by four (4) to determine the average row width.

Step 9 - Repeat Steps 3 through 8 for each additional random sampling point coordinate.

Step 10 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of corn samples. Gross yield is determined by deducting the adjustment for moisture content of shelled corn from the harvest weight. Moisture content of the grain sample will be determined by lab analysis.

Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

Gross Yield = $\frac{A \times B \times C}{D}$ / (E x 56 lbs/bu)
Per Acre
bu/ac

where: A = Field weight of husked ears of corn from 15 feet of row x 2 (2 Rows x 15 feet);

B = Weight of shelled grain at time of moisture test;

C = Percent moisture in grain corrected to 15.5%;

= $(1.0 - \frac{\text{Moisture content of shelled corn}}{100}) / .845$

D = Weight of ears of Corn used for moisture determination;

E = Row Factor

Area or Percent of Acre	30" = 0.001722
Sampled with 30 feet of	36" = 0.002066
Row (2 rows x 15 feet)	38" = 0.002181
	40" = 0.002295

and .845 = The standard moisture content conversion factor of corn per bushel (1.0 - .155).

After calculation of the gross yield, the Harvest Loss will be

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subtracted from the gross yield to obtain a net yield per sample. Harvest Loss is the difference between actual grain yield and what is hauled from a field. The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity.

SOYBEAN SAMPLING TECHNIQUE BROADCAST BEANS

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample locations.

Step 3 - After taking the last of the required paces to the first sampling point, lay down a sampling frame so that it touches the toe of your shoe, crossing the crop rows at a right angle. Mark the two ends of the sampling frame with stakes just inside the 3.0 foot sampling lines. Continue to lay out the sample area in the direction of travel from where the last pace was counted. Rotate the sampling frame so that it is perpendicular to one corner of the stake (previously marked), and at a right angle to the original frame position. (Note: If at any time the point of a line is restricted by a soybean plant, slide the soybean frame toward the starting point far enough for the point of the line to clear the plant). Repeat this procedure to lay out the other two sides of the sampling square, using the opposite corner of the original frame position to find the other two sides.

Step 4 - Strip all the soybean pods from all the plants in the 9 square feet sampling area. Pick up any loose pods or beans found on the ground. Deposit all the pods, beans and blank pods, into a paper sack. Mark the sack with the appropriate field number (as provided by the mine operator), and sample identification number. Secure the sample sack to prevent any sample loss. (Note: If sample weight is below 250 grams for the moisture test, grain of known moisture content as is necessary to reach the test weight will be added to the sample so that moisture tests can be made).

Step 5 - Repeat steps 3 and 4 for each additional random sampling point coordinate.

Step 6 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

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The following method will be used for determination of gross yield of soybean samples. Gross yield is determined by deducting the adjustment for moisture content of the soybean sample from the harvest weight. Moisture content of the grain sample will be determined by lab analysis.

Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

Gross Yield Per Acre =
$$\frac{\text{Total weight of all beans in 9 sq. ft. grid (in grams)}}{\text{bu/ac}} \times \text{Conversion x (1.0 - (\% Factor moisture/100))}$$

Where the conversion factor =
$$\frac{43560 \text{ sq. ft./ac.}}{453.6 \text{ gms/lb} \times 60 \text{ lbs/bu} \times 9 \text{ sq. ft.}}$$

and .875 = The standard moisture content conversion factor of soybeans per bushel (1.0-(12.5%/100)).

After calculation of the gross yield, the Harvest Loss will be subtracted from the gross yield to obtain a net yield per sample. Harvest Loss is the difference between actual grain yield and what is hauled from the yield. The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity.

SOYBEAN SAMPLING TECHNIQUE
DRILLED OR PLANTED BEANS

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual locations.

Step 3 - After taking the last of the required paces to the first sampling point, mark the closest plant to the toe of your foot. Place a flag at the point that you have just marked. From the point of this flag, and in the direction of travel from where the last pace was counted, measure a distance of six feet of plant row and place a flag at the six foot mark. Starting from the row just identified, measure the distance across five rows. This distance, from row one to row five, divided by four row

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spaces gives the average row width.

Step 4 - Strip all the soybean pods from all the plants in the 6 foot sample row. Pick up any loose pods or beans found on the ground at the base of these plants. Deposit all the pods, beans and blank pods, into a paper sack. Mark the sack with the appropriate field number (as provided by the mine operator), and sample identification number. Secure the sample sack to prevent any sample loss. (Note: If sample weight is too small for the moisture test, sufficient grain of known moisture content will be added to the sample so that moisture tests can be made).

Step 5 - Repeat steps 3 and 4 for each additional random sampling point coordinate.

Step 6 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of soybean samples. Gross yield is determined by deducting the adjustment of moisture content of the soybean sample from the harvest weight. Moisture content determinations will be made by the Illinois Cooperative Crop Reporting Service.

Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

$$\begin{array}{l} \text{Gross Yield} \\ \text{Per Acre} \\ \text{(bu/acre)} \end{array} = \frac{A \times B}{C \times D \times E}$$

Where A = Weight of harvested grain from 6 feet of row

$$B = \frac{\text{Percent moisture in grain corrected to 12.5\%}}{(1.0 - (\% \text{ moisture in shelled beans} / 100))}$$

0.875

C = Number of grams per pound = 453.6

D = Correction factor for row spacing on drilled or planted beans

$$= \frac{\text{Average row width across-5 rows-(feet)}(4 \text{ row spaces})}{12}$$

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$$\frac{\text{inches/ft.}}{\text{x 6 feet of row}} = \frac{43560 \text{ sq. ft./acre}}{E}$$

E = Standard weight of 1 bushel of soybeans = 60

After calculation of the gross yield, the Harvest Loss as calculated by Illinois Cooperative Crop Reporting Service will be subtracted from the gross yield to obtain a net yield per sample. The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity.

WHEAT SAMPLING TECHNIQUES

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample location.

Step 3 - After taking the last of the required paces to the first sampling point, lay down a sampling frame so that it touches the toe of your shoe, crossing the crop rows at a right angle. Mark the two ends of the sampling frame with stakes just inside the 1.8 feet sample lines. Continue to lay out the sample area in the direction of travel from where the last pace was counted. Rotate the sampling frame so that it is perpendicular to one corner of the stake (previously marked) and at a right angle to the original frame position. Repeat this procedure to lay out the other two sides of the sampling square using the opposite corner of the original frame position to find the other two sides.

Step 4 - Clip all wheat heads from within the square outlined by the sampling frame. The wheat heads should be clipped approximately 1/2 inch below the bottom of the head. Deposit all the collected wheat heads into a paper sample sack. Mark the sack with the approximate field number (as supplied by the mine operator), and sample identification number. Secure the sample sack to prevent any sample loss. (Note: If sample weight is below 250 grams for the moisture test, grain of known moisture content will be added to the sample so that moisture tests can be made).

Step 5 - Repeat steps 3 and 4 for each additional random sampling point coordinate.

Step 6 - Send or deliver to the Illinois Department of Agriculture

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grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of wheat samples. Gross yield is determined by deducting the adjustment for moisture content of the wheat sample from the harvest weight. Moisture content of the grain sample will be determined by lab analysis.

Gross Yield - Harvest Weight adjusted for moisture content Included below for reference is the Gross Yield formula and an explanation of its components.

$$\begin{aligned} \text{Gross yield} &= \text{Sample wt.} \\ \text{Per Acre} &= \text{of wheat} \\ \text{bu./ac} &= \frac{(\text{in grams}) \times (1.0 - (\% \text{ moisture}/100)) \times \text{factor}}{\text{conversion}} \\ &= \frac{43560 \text{ sq. ft./ac.} = .4940 \text{ bu./gm}}{60 \text{ lbs./bu} \times 453.6 \text{ gms./lb} \times 3.24 \text{ sq. ft.}} \text{ acre} \end{aligned}$$

and .98 = The standard moisture content conversion factor of wheat per bushel $(1.0 - (12\%/100))$.

The following formula shall be used where rows are discernible.

$$\begin{aligned} \text{Gross yield} &= \text{Sample wt.} \\ \text{Per acre} &= \text{of wheat} \\ \text{bu./acre} &= \frac{(\text{in grams}) \times (1 - (\% \text{ moisture}/100)) \times \text{conversion factor}}{.880} \\ \text{Where the} &= \frac{(45360 \text{ sq. ft./ac.}) / (60 \text{ lbs./bu.} \times 453.6 \text{ gms./lb.})}{\text{x number of rows harvested x 1.8 ft. x average row spacing (ft.)}} \end{aligned}$$

and .880 = The standard moisture content conversion factor of wheat per bushel $(1 - (12\%/100))$.

The row spacing will be determined by measuring across 5 row spaces to obtain an average.

After calculation of the gross yield, the Harvest Loss will be subtracted from the gross yield to obtain a net yield per sample. Harvest Loss is the difference between actual grain yield and what is hauled from a field. The net yield determinations for each sample will be averaged together to obtain a

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yield figure for the entire field being evaluated for proof of productivity.

OATS SAMPLING TECHNIQUE

- Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.
- Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample location.
- Step 3 - After taking the last of the required paces to the first sampling point, lay down a sampling frame so that it touches the toe of your shoe, crossing the crop rows at a right angle. Mark the two ends of the sampling frame with stakes just inside the 1.8 feet sampling lines. Continue to lay out the sample area in the direction of travel from where the last pace was counted. Rotate the sampling frame so that it is perpendicular to one corner of the stake (previously marked) and at a right angle to the original frame position. Repeat this procedure to lay out the other two sides of the sampling square using the opposite corner of the original frame position to find the other two sides.

- Step 4 - Clip all oat heads from within the square outlined by the sampling frame. The oat heads should be clipped approximately 1/2 inch below the bottom of the head.

Deposit all the collected oat heads into a paper sample sack. Mark the sack with the appropriate field number (as supplied by the mine operator), and sample identification number. Secure the sample sack to prevent any sample loss. (Note: If sample weight is below 250 grams for the moisture test, grain of known moisture content will be added to the sample so that moisture tests can be made).

- Step 5 - Repeat steps 3 and 4 for each additional random sampling point coordinate.

- Step 6 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of oat samples. Gross yield is determined by deducting the harvest weight. Moisture content of the grain samples will be determined by lab analysis.

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Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

$$\frac{\text{Gross yield}}{\text{Per Acre}} = \frac{\text{Sample wt. of oats}}{\text{(in grams)}} \times \frac{\text{conversion}}{\text{(1.0 - (\% moisture/100))} \times \text{factor}}$$

$$\text{Where the conversion factor} = \frac{43560 \text{ sq. ft./ac.}}{32 \text{ lbs/bu} \times 453.6 \text{ gms/lb}} = \frac{.9262 \text{ bu./gm}}{3.24 \text{ sq. ft. acre}}$$

$$\text{and .85} = \frac{\text{The standard moisture content conversion factor of oats per bushel (1.0 - (15\%/100))}}{}$$

The following formula shall be used where rows are discernible.

$$\frac{\text{Gross yield}}{\text{Per acre}} = \frac{\text{Sample wt. of oats}}{\text{(in grams)}} \times \frac{\text{conversion}}{\text{(1.0 - (\% moisture/100))} \times \text{factor}}$$

$$\text{Where the conversion} = \frac{(43560 \text{ sq. ft./ac.})}{\text{x number of rows harvested} \times \text{1.8 ft. x average row spacing (ft.)}}$$

$$\text{and .850} = \frac{\text{The standard moisture content conversion factor of oats per bushel (1 - (15\%/100))}}{}$$

The row spacing will be determined by measuring across 5 row spaces to obtain an average.

After calculation of the gross yield, the Harvest Loss will be subtracted from the gross yield to obtain a net yield per sample. Harvest Loss is the difference between actual grain yield and what is hauled from a field. The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity.

SORGHUM SAMPLING TECHNIQUE

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinates in a sequential fashion to determine individual sample locations.

Step 3 - After taking the last of the required paces to the first sampling point, place a stake immediately adjacent to the closest sorghum plant to the toe of your shoe. Measure ten (10) feet of the plant row starting at the first stake and placing a second stake at the ten (10) foot mark. Move to the next adjacent plant row, measure and stake a second ten (10) foot section in the same manner as the first row. One sample unit will equal two (10) ten foot sorghum row sections.

Step 4 - Clip all grain heads in Row 1 within the ten (10) foot segment of the sample unit.

Step 5 - Weight the clipped grain heads using a balance scale - obtain field weight to the nearest tenth (0.1) of a pound.

Step 6 - Clip the first five grain heads and the last five grain heads in Row 2 to be used for moisture determination. Place any grain heads collected for moisture determination into sealed polyethylene bags. Mark the bags with the appropriate field number (as supplied by the mine operator), and sample identification number.

Step 7 - Measure on a perpendicular line from the plants in row one (1) to the plants in row five (5). Divide this measured distance by four (4) to determine the average row width.

Step 8 - Repeat Steps 3 through 7 for each additional random sampling point coordinate.

Step 9 - Send or deliver to the Illinois Department of Agriculture any grain sample collected for moisture content analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

The following method will be used for determination of gross yield of sorghum samples. Gross yield is determined by deducting the adjustment for moisture content of the threshed grain from the harvest weight. Moisture content of the grain samples will be made by lab analysis.

Gross Yield = Harvest Weight adjusted for moisture content

Included below for reference is the Gross Yield formula and an explanation of its components.

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$$\text{Gross Yield} = \frac{A \times B \times C}{D} \text{ / E} \times 56 \text{ lbs/bu}$$

Where: A = Field weight of grain heads of sorghum from ten (10) feet of row x 2 (2 rows x 10 feet);

B = Weight of threshed grain at time of moisture test;

C = Percent moisture in grain corrected to 13.0%;

$$= (1.0 - (\text{Moisture content of threshed grain})) / 0.870$$

100

D = Weight of grain seeds used for moisture determination;

E = Row factor 28" = .001070

Area or percent of Acre 30" = .001148

Sampled with 20 feet 36" = .001377

of Row (2 rows x 10 38" = .001455

feet) 40" = .001529

and .870 = The standard moisture content conversion factor of sorghum per bushel (1.0 -.130)

MIXED HAY SAMPLING TECHNIQUE

Step 1 - Mark the starting corner of the field to be sampled with a large stake and attach a ribbon or flag to it.

Step 2 - Pace off predetermined sample point coordinate in a sequential fashion to determine individual sample locations.

Step 3 - After taking the last of the required paces to the first sampling point, lay down a sampling frame perpendicular to the toe of your shoe, where applicable, crossing crop rows at a right angle. Mark the two ends of the sampling frame with stakes just inside the 3 feet sampling lines. Continue to lay out the sample area in the direction of travel from where the last pace was counted. Rotate the sampling frame so that it is perpendicular to one corner of the stake (previously marked) and at a right angle to the original frame position. Repeat this procedure to lay out the other two sides of the sampling square using the opposite corner of the original frame position to locate the other two sides. In all cases, the layout of the sample area shall be consistent for each randomly identified sample point.

Step 4 - Clip all hay stalks from within the square outlined by the

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sampling frame. The hay stalks should be uniformly clipped to an approximate height of two (2) inches above ground level.

Step 5 - Deposit all of the collected hay sample into a suitable sample sack/container. Mark the sack/container with the appropriate field number (as supplied by the mine operator), and sample identification number. Secure the sample sack/container to prevent any sample loss. (Note: If the sample weight is too large for handling by lab personnel, the sample may be quartered until an adequate representative sample for moisture testing is obtained.)

Step 6 - Repeat Steps 3 and 4 for each additional random sampling point coordinate.

Step 7 - Send or deliver to the Illinois Department of Agriculture any hay sample collected for moisture analysis. (Note: If any single sample requires more than one bag, additional bags should be identified sequentially such as 1A, 1B, 1C).

* If a field moisture meter is used, steps 5 and 7 shall be eliminated and the following explanations for items A and D will be substituted.

A. Dry matter weight = harvest weight - percent moisture content determined by field moisture tests.

D. Percent moisture in hay at time of harvest determined by field moisture test.

The following method will be used for determination of gross yield of mixed hay samples. Gross yield is determined by deducting the adjustment for moisture content of the mixed hay sample from the harvest weight. Moisture content of mixed hay samples will be determined by lab analysis.

Gross Yield = Harvest weight adjusted for moisture content

$$\text{Gross yield (Tons/Acre)} = \frac{(A \times \frac{1}{C})}{(B \times F)}$$

Where: A = Oven-dry weight--of-harvested-hay; Field weight or harvested weight of mixed hay.

B = Sample-size--(FT²)--43560--FT²/acre; Plot size (sq. ft./43560 sq. ft./ac.) or number of acres.

C = Conversion-factor--from-lbs-harvested--to--tons--(1--er--1--ton--= 2000-lbs) Conversion factor from lbs. to tons.

D = Percent moisture-in-hay-at-time-of-harvest-

= Wet-wt---oven-dry-wt--x-100--=%-H₂O

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Given-dry--wt- Dry matter content of harvested hay (100% - % moisture in hay.)
E = Approximate-%-moisture-in-mixed-baled-hay---45% Dry matter content of hay standard (100% - 15%)
F = D/E = 100% - % H2O in Hay at Time of Harvest 15%

The net yield determinations for each sample will be averaged together to obtain a yield figure for the entire field being evaluated for proof of productivity. The annual harvest will be determined by the cumulative yields of each cutting.

SPECIAL PROBLEMS IN SAMPLE LAYOUT

1. It is possible for a sample grid coordinate to fall on areas within the field boundary which were not planted to crops (i.e., grass waterway, roadway, etc.) When this situation occurs, stop the pace count at the start of such an area and resume the count on the other side of the area.
2. If a blank area is crossed which was planted to crops, the pace count should be continued through this area. Usually such areas are due to poor germination, insects, standing water, etc. (if the sample area falls in this planted area which is blank, then a zero yield is established).
3. If a sample coordinate falls partly in a blank area which was not planted for harvest, move the sample area ahead until it is wholly on acreage planted to the crop being sampled. The sample point should begin one pace from the edge of the blank area.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENT(S)

- 1) The Heading of the Part: Permanent Program Performance Standards--Underground Mining Activities

2) Code Citation: 62 Ill. Adm. Code 1817

<u>Section Number:</u>	<u>Proposed Action:</u>
1817.49	Amended
1817.58	Amended
1817.84	Amended
1817.116	Amended
1817.117	Amended
1817.150	Amended
1817.151	New Section

- 4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).
- 5) A complete description of the subjects and issues involved:
On August 29, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE), by final rule, instructed the Illinois Department of Mines and Minerals (Department) to submit proposed amendments designed to correct defects identified in Illinois' rules. See 55 Fed. Reg. 35301 (August 29, 1990).

On September 20, 1989, OSMRE sent the Department a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

Finally, the Department has identified rules that must be amended in order to more effectively carry out Illinois' responsibilities under the Surface Coal Mining Land Conservation and Reclamation Act. Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.

The following discussion describes the Department's proposed amendments to Part 1817 in response to these OSMRE directives and agency concerns.

Section 1817.49 sets forth the Department's performance standards for temporary and permanent impoundments constructed to facilitate underground coal mining operations. The proposed amendments to subsection (a)(4) provide an alternative to the performance standards in subsection (a)(3) by specifying that compliance with the U.S. Soil Conservation Service's standards satisfies the Department's performance standards for certain impoundments. The proposed amendments will provide a design standard alternative to the current performance standard safety factor requirements. Such design standards are specifically provided for at 53 Fed. Reg. 43584 (October 27, 1988). The proposed amendment to

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subsection (b) (9) corrects a typographical error.

Section 1817.68 sets forth the Department's requirements for compiling and maintaining records of blasting operations. The Department proposes to amend subsection (a) by adding weather conditions to the list of data required to be maintained by operators in their records of blasting operations. The proposed amendment requiring that recorded blast data address weather conditions satisfies OSMRE's directive. See 55 Fed. Reg. 35301 (August 29, 1990).

Section 1817.84 sets forth the Department's requirements regarding coal mine waste impounding structures. The proposed amendment to subsection (b) (2) requires that structures meeting the Mine Safety and Health Administration's (MSHA) criteria set forth in 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour precipitation event, rather than a 100 year, 6-hour precipitation event. The proposed addition of subsection (f) specifies that, for impounding structures constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event must be removed within the 10-day period following each occurrence of that event. The proposed amendments serve to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 817.84.

Section 1817.116 sets forth the Department's requirements for revegetation success standards. Proposed new subsections (D) and (E) define the extent to which rill and gully repairs can be considered nonaugmentative. These proposed amendments are in response to OSMRE's directive in their September 20, 1989 letter to the Department. The proposed amendment to subsection (a) (3) establishes a method for evaluating revegetation success of ground cover, in accordance with OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a) (3) (C) specifies that for revegetation success purposes, measurements may not be taken on cropland during the first year of the responsibility period. The amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a) (3) (D) changes the word "stocking" to "population" in order to enhance clarity and avoid confusion.

The first proposed amendment to subsection (a) (3) (E) specifies that for revegetation success purposes, measurements may not be taken on pasture and/or hayland or grazing land during the first year of the responsibility period. The amendment is in response to OSMRE's September

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20, 1989 directive to the Department.

The proposed new last sentence of subsection (a) (3) (E) allows one (1) successful year of corn production to be used as a substitute for one (1) successful year of hay production, for revegetation success purposes, on high capability land. The purpose of this amendment is to maximize land use management alternatives on cropland capable land.

The proposed amendment to subsection (b) (2) changes the deadline date for reclamation activity report submittals to coincide with a related submittal required under 62 Ill. Adm. Code 1816.116(a) (4).

Section 1817.117 sets forth the Department's requirements for tree and shrub vegetation. The proposed terminology changes in subsection (a) from "stocking" to "population" or "vegetation" enhance clarity and avoid confusion.

The proposed amendment to subsection (a) (1) requires that for revegetation success purposes, survival counts be taken during the last year of the five (5) year responsibility period. Such counts could previously have been taken in the third year of the five (5) year responsibility period. The proposed amendment is in response to OSMRE's September 20, 1989 directive to the Department.

The proposed amendment to subsection (a) (3) responds to OSMRE's September 20, 1989 directive by making clear that ground cover is not required on impervious structures only.

Proposed new subsection (a) (5) defines what are considered normal husbandry and conservation practices in accordance with OSMRE's September 20, 1989 letter to the Department.

The proposed terminology changes in subsections (b) and (c) enhance clarity and avoid confusion.

Proposed new subsection (d) establishes a technique for measuring the revegetative success of ground cover in accordance with OSMRE's September 20, 1989 directive.

Section 1817.150 sets forth the Department's requirements for the protection of roads. The proposed rewrite of Section 1817.150 establishes classification criteria for mine roads, performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with underground coal mining operations, environmental protection criteria for the design, construction and reconstruction of roads, and requirements for the location and maintenance of roads associated with underground coal mining operations. The proposed rewrite of Section 1817.150 serves

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to bring Illinois' regulations into conformance with OSMRE's counterpart regulation, 30 CFR 817.150.

Proposed new Section 1817.151 establishes performance standards for primary roads in addition to those contained at Section 1817.150. Specifically, Section 1817.151 establishes performance standards relating to primary road construction and reconstruction certification, safety factor, location, drainage control and surfacing. Proposed new Section 1817.151 serves to make the Department's requirements consistent with OSMRE's counterpart regulation, 30 CFR 817.151.

- 6) Will this proposed rule replace an emergency rule currently in effect?
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? Yes
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

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12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991
- B) Types of small businesses affected: This rulemaking may affect independently owned and operated mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have gross annual sales of less than \$4 million.
- C) Reporting, bookkeeping or other procedures required for compliance: Section 1817.68(a) requires mine operators to add wind velocity and direction and weather conditions to the list of data required to be maintained in their records of blasting operations.
- Section 1817.116(a)(3) requires that vegetative ground cover be measured using the technique set forth in proposed Section 1817.117(d) for revegetation success purposes.
- Section 1817.150 establishes more extensive performance standards relating to roads than previously existed.
- Section 1817.151 establishes additional performance standards for primary roads and requires professional engineering skills and report certifications.
- D) Types of professional skills necessary for compliance:
Professional Engineer

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING

CHAPTER 1: DEPARTMENT OF MINES AND MINERALS

PART 1817

PERMANENT PROGRAM PERFORMANCE STANDARDS--

UNDERGROUND MINING OPERATIONS

Section	
1817.11	Signs and Markers
1817.13	Casing and Sealing of Exposed Underground Openings: General Requirements
1817.14	Casing and Sealing of Underground Openings: Temporary
1817.15	Casing and Sealing of Underground Openings: Permanent
1817.21	Topsoil: General Requirements (Repealed)
1817.22	Topsoil and Subsoil
1817.23	Topsoil: Storage (Repealed)
1817.24	Topsoil: Redistribution (Repealed)
1817.25	Topsoil: Nutrients and Soil Amendments (Repealed)
1817.41	Hydrologic Balance Protection
1817.42	Hydrologic Balance: Water Quality Standards and Effluent Limitations
1817.43	Diversions
1817.44	Hydrologic Balance: Stream Channel Diversions (Repealed)
1817.45	Hydrologic Balance: Sediment Control Measures
1817.46	Hydrologic Balance: Siltation Structures
1817.47	Hydrologic Balance: Discharge Structures
1817.48	Hydrologic Balance: Acid - Forming and Toxic - Forming Materials (Repealed)
1817.49	Impoundments
1817.50	Hydrologic Balance: Underground Mine Entry and Access Discharges (Repealed)
1817.52	Hydrologic Balance: Surface and Ground Water Monitoring (Repealed)
1817.53	Hydrologic Balance: Transfer of Wells (Repealed)
1817.55	Hydrologic Balance: Discharge of Water Into an Underground Mine (Repealed)
1817.56	Post - Mining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities
1817.57	Hydrologic Balance: Stream Buffer Zones
1817.59	Coal Recovery
1817.61	Use of Explosives: General Requirements
1817.62	Use of Explosives: Pre - Blasting Survey
1817.64	Use of Explosives: General Performance Standards
1817.65	Use of Explosives: Surface Blasting Requirements (Repealed)
1817.66	Use of Explosives: Blasting Signs, Warnings, and Access Control
1817.67	Use of Explosives: Control of Adverse Effects
1817.68	Use of Explosives: Records of Blasting Operations
1817.71	Disposal of Excess Spoil: General Requirements
1817.72	Disposal of Excess Spoil: Valley Fills/Head-of-Hollow Fills

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1817.73	Disposal of Underground Development Waste and Excess Spoil: Head-of-Hollow Fills (Repealed)
1817.74	Disposal of Excess Spoil: Durable Rock Fills
1817.75	Disposal of Excess Spoil: Preexisting Benches
1817.81	Coal Mine Waste: General Requirements
1817.82	Coal Processing Waste Banks: Site Inspection (Repealed)
1817.83	Coal Mine Waste: Refuse Piles
1817.84	Coal Mine Waste: Impounding Structures
1817.85	Coal Processing Waste Banks: Construction Requirements (Repealed)
1817.86	Coal Processing Waste: Burning (Repealed)
1817.87	Coal Mine Waste: Burning and Burned Waste Utilization
1817.88	Coal Processing Waste: Return to Underground Workings (Repealed)
1817.89	Disposal of Noncoal Mine Wastes
1817.91	Coal Processing Waste: Dams and Embankments: General Requirements (Repealed)
1817.92	Coal Processing Waste: Dams and Embankments: Site Preparation (Repealed)
1817.93	Coal Processing Waste: Dams and Embankments: Design and Construction (Repealed)
1817.94	Coal Processing Waste: Time Requirement for Completion of Covering (Repealed)
1817.95	Stabilization of Surface Areas
1817.97	Protection of Fish, Wildlife and Related Environmental Values
1817.99	Slides and Other Damage
1817.100	Contemporaneous Reclamation and Subsidence Control
1817.101	Backfilling and Grading: General Requirements
1817.102	Backfilling and Grading: General Grading Requirements
1817.103	Backfilling and Grading: Covering Coal and Acid- and Toxic-forming Materials (Repealed)
1817.106	Backfilling and Grading: Previously Mined Areas
1817.107	Backfilling and Grading: Steep Slopes
1817.111	Revegetation: General Requirements
1817.112	Revegetation: Use of Introduced Species (Repealed)
1817.113	Revegetation: Timing
1817.114	Revegetation: Mulching and Other Soil Stabilization Practices
1817.115	Revegetation: Grazing (Repealed)
1817.116	Revegetation: Standards for Success
1817.117	Revegetation: Tree and Shrub Stocking <u>Vegetation</u>
1817.121	Subsidence Control
1817.122	Subsidence Control: Public Notice
1817.124	Subsidence Control: Surface Owner Protections (Repealed)
1817.126	Subsidence Control: Buffer Zones (Repealed)
1817.131	Cessation of Operations: Temporary
1817.132	Cessation of Operations: Permanent
1817.133	Post - Mining Land Capability
1817.150	Roads: General
1817.151	Primary Roads
1817.180	Utility Installations

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- 1817.181 Support Facilities
 1817.182 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area
 1817.190 Affected Acreage Map

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; amended at 6 Ill. Reg. 15024, effective December 30, 1982; codified at 8 Ill. Reg. 8230; amended at 9 Ill. Reg. 13315, effective October 10, 1985; amended at 10 Ill. Reg. 9606, effective July 1, 1986; amended at 11 Ill. Reg. 8250, effective July 1, 1987; amended at 14 Ill. Reg. 11855, effective January 1, 1991; amended at 111. Reg. _____, effective _____.

Section 1817.49 Impoundments

- a) The requirements of this subsection apply to both temporary and permanent impoundments.

1) Impoundments meeting the size and other qualifying criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 (198990) and this Section. 30 CFR 77.216 does not include any later editions or amendments. The plan required to be submitted to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216 shall also be submitted to the Department as part of the permit application insofar as the MSHA informational design standard requirements are duplicative of the requirements of 62 Ill. Adm. Code 1784. In addition, the operator shall submit to the Department any certification issued by MSHA with respect to the design plan.

2) The design of impoundments shall be sealed in accordance with 62 Ill. Adm. Code 1784.16(a) as designed to meet the requirements of this Part using current, prudent engineering practices. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

3) Impoundments shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.27, or

4) The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to

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structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P.L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a), are contained in U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs", October 1985. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in U.S. Soil Conservation Service Practice Standard 378, "Ponds", April 1987. Technical Release No. 60 and Practice Standard 378 are hereby incorporated by reference and do not include later editions or amendments.

45) Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

56) Foundations.

A) Foundations and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability.

B) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

67) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

78) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be rippedraped or otherwise stabilized in accordance with accepted design practices.

89) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in subsection (b) or (c).

910) Inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced

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in the construction of impoundments, as evidenced by the placement of a registered professional engineer's seal on the inspection report.

- A) Impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be inspected, examined and certified in accordance with 30 CFR 77.216. Annual status reports required under 30 CFR 77.216-4 shall be submitted to the Department within 30 days after the reporting period.
- B) All other impoundments shall be inspected at least weekly during construction and upon completion of construction. The qualified registered professional engineer shall submit to the Department within thirty (30) days after each inspection, a sealed report that the impoundment has been constructed as designed and in accordance with the approved plan and these regulations.
- C) A copy of the reports required in subsections (a)(9)(A) and (B) above, and the examination reports required in subsection (a)(10) below, shall be retained at or near the mine site. The Department may approve reports being retained at a different location if there is no permanent mine office.

1011) Impoundments which do not meet the size or other qualifying criteria of 30 CFR 77.216(a) shall be examined at least quarterly by a qualified person designated by the permittee for appearances of instability, structural weakness or other hazardous conditions. At least one of the quarterly examinations conducted during the calendar year shall be sealed by a qualified registered professional engineer and shall include a discussion of any appearances of instability, structural weakness or other hazardous conditions, and any other aspects of the structure affecting stability, and a statement indicating the pond has been maintained in accordance with the approved plan and these regulations. This examination shall be conducted during the period of October 1 through December 31 of each calendar year. The sealed examination report shall be submitted to the Department within 30 days of the examination. Impoundment examinations shall be conducted until the impoundment has been removed or until final bond release in accordance with 62 Ill. Adm. Code 1800.40. If the operator can demonstrate that failure of the structure would not create a potential threat to public health and safety or threaten significant environmental harm, the following impoundments shall be exempt from the examination requirements of this subsection, following approval by the

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Department:

- A) Impoundments that are completely incised;

B) Water impounding structures that impound water to a design elevation no more than five (5) feet above the upstream toe of the structure and that can have a storage volume of not more than twenty (20) acre-feet; and

C) Impoundments that do not facilitate mining or reclamation including, but not limited to, sewage lagoons, landscaping ponds, pools or wetlands in replaced stream channels, existing impoundments not yet used to facilitate mining, ephemeral waterbodies, active mining pits and differential settlement pools.

1112) If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the Department of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the Department shall be notified immediately. The Department shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

- b) Permanent impoundments. A permanent impoundment of water may be created, if authorized by the Department in the approved permit, based upon the following demonstration:

- 1) The size and configuration of the impoundment is adequate for its intended purposes.
- 2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet water quality standards set forth in Section 1817.42, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below water quality standards set forth in Section 1817.42.
- 3) The water level will be sufficiently stable and be capable of supporting the intended use.
- 4) Final grading will provide for adequate safety and access for proposed water users.
- 5) The impoundment will not result in the diminution of the

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quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

6) The impoundment will be suitable for the approved post-mining land use.

7) The impoundment perimeter slopes shall be consistent with the intended use of the impoundment, not be steeper than the angle of repose and comply with subsection (a)(3). Where surface runoff enters the impoundment area, the side slope shall be protected against erosion.

A) Runoff from above the slope shall be diverted to erosion free outlets.

B) Grading of slopes shall be scheduled to be completed at the onset of the most favorable seeding period.

8) Embankment ponds, those having embankment heights of three (3) feet or greater above natural ground elevation, shall have outslopes of 1v:2h or less and interior slopes to the normal pool elevation of 1v:2h or less.

9) Permanent impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type. Permanent impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil and type.

10) In lieu of the combination principal and emergency spillway requirements of Section 1817.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections (b)(10)(A) and (b)(10)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (b)(9). The Department shall approve a single open-channel spillway that is:

A) Of nonerodible construction and designed to carry sustained flows; or

B) Earth or grass-lined and designed to carry short-term,

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infrequent flows at non-erosive velocities where sustained flows are not expected.

c) Temporary impoundments.

1) Temporary impoundments not meeting the size or other qualifying criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a twenty-five (25) year, six (6) hour precipitation event or such larger event as may be required by the Department based on factors such as terrain, topography and soil type. Temporary impoundments meeting the size or other criteria of 30 CFR 77.216(a) shall be provided with a spillway that will safely discharge a one hundred (100) year, six (6) hour precipitation event, or such larger event as may be specified by the Department based on factors such as terrain, topography and soil type.

2) In lieu of the combination principal and emergency spillway requirements of Section 1817.49(a)(8), an impoundment may have a single spillway configured as set forth in subsections (c)(2)(A) and (c)(2)(B) that is designed and constructed to safely pass the applicable design precipitation specified in subsection (c)(1). The Department shall approve a single open-channel spillway that is:

A) Of nonerodible construction and designed to carry sustained flows; or

B) Earth or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(Source: Amended Ill. Reg. _____, effective _____)

Section 1817.68 Use of Explosives: Records of Blasting Operations

a) A record of each blast, including seismograph reports, shall be retained by the operator for at least three (3) years and shall be available for inspection by the Department and the public on request. The record is to be completed by the end of the work day following the day in which the blast occurred, including the seismograph meter reading, if available, and shall contain the following data:

1) Name of the operator conducting the blast;

2) Location, date, and time of blast;

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- 3) Name, signature, and certification number of the blaster conducting the blast;
- 4) The name of the owner or resident of, and the direction and distance, in feet, to the nearest dwelling, school, church, or commercial, or institutional building either:
 - A) Not located in the permit area; or
 - B) Not owned by the person who conducts the surface mining activities.
- 5) Type of material blasted;
- 6) Number of holes, burden, and spacing;
- 7) Diameter and depth of holes;
- 8) Types of explosives used;
- 9) Total weight of explosives used;
- 10) Weight of explosives used per hole;
- 11) Maximum weight of explosives detonated within any eight (8) millisecond period;
- 12) Maximum number of holes or decks detonated within any eight (8) millisecond period;
- 13) Initiation system;
- 14) Type and length of stemming;
- 15) Type of delay detonator and delay periods used;
- 16) Sketch of the delay pattern, including decking;
- 17) Reasons and conditions for each unscheduled blast;
- 18) Wind velocity and direction; and
- 19) Weather conditions, including those which may cause possible adverse blasting effects.

- b) Air blast and/or ground vibration recordings, or photographic copies thereof, where required, shall be kept at the mine site office for a period of three (3) years following the date of the blast, and shall

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be available for inspection by the Department and the public on request. The recordings shall include the following:

- 1) Maximum air blast and/or ground vibration levels recorded;
- 2) The exact location of the monitoring equipment, and its distance from the blast, and the date and time of the recording;
- 3) Name of the person and firm making the recording;
- 4) Name of the person and firm analyzing the recording. The recording shall be signed and dated by the person performing the analysis; and
- 5) The type of instrument, sensitivity, and calibration signal or certification of annual calibration. When the recordings required at Sections 1817.67(c) and 1817.67(g) are produced via digitized systems, the sampling rate of the digitizer, in samples per second, shall be stated.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 1817.84 Coal Mine Waste: Impounding Structures

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of Section 1817.81.

- a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the Department that the stability of such a structure conforms to the requirements of this Part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the Department in accordance with 62 Ill. Adm. Code 1780.25.

b)

- 1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with Section 1817.49(a) and (c). Such structures may not be retained permanently as part of the approved post-mining land use.

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- 2) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of 30 CFR 77.216(a), the combination of principal and emergency spillways shall be able to safely pass the one hundred (100) year, six (6) hour design precipitation event. Each impounding structure constructed of coal mine waste or intended to impound coal mine waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event as specified by Department after consideration of factors such as watershed size and characteristics necessary to ensure design in accordance with prudent engineering practices.
- c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion in accordance with Section 1817.47. Inlets shall be protected against blockage.
- d) Drainage control. Runoff from areas above the disposal facility or runoff from the surface of the facility that causes instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of Section 1817.43 and designed to safely pass the runoff from a one hundred (100) year, six (6) hour design precipitation event.
- e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least ninety (90) percent of the water stored during the design precipitation event can be removed within a ten (10) day period.
- f) For an impounding structure constructed of or impounding coal mine waste, at least ninety (90) percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event.

(Source: Amended at ____ Ill. Reg. ____, effective ____)

Section 1817.116 Revegetation: Standards for Success

- a)
- 1) Success of revegetation shall be judged in accordance with Sections 1817.116 and 1817.117.
- 2)

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- A) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Department in accordance with subsection (a)(2)(C).
- B) The period of extended responsibility shall continue for a period of not less than five (5) full years. Vegetation parameters identified in subsection (a)(1) shall equal or exceed the approved success standard set forth in subsection (a)(3).
- C) The Department shall approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the post-mining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved post-mining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.
- D) Fill and gully repair on cropland-capable reclaimed land will not be considered augmentation if an operator has an approved erosion control plan in place in the field pursuant to 62 Ill. Adm. Code 1823.14(g) or 1825.14(f), and shortly after the repair, the Department makes the following determinations:
- i) the area is a minor erosional feature;
 - ii) the area is small;
 - iii) the erosion is not expected to recur; and
 - iv) the area is stable.
- E) Fill and gully repair on noncropland-capable land will not be considered augmentation if, shortly after the first rainfall event after the repair, the Department makes the following determinations:

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- i) the area is a minor erosional feature;
- ii) the area is small;
- iii) the erosion is not expected to recur; and
- iv) the area is stable.

BE)

i) In those cases where a permittee augments any cropland areas in order to achieve the revegetation success standards of subsection (a)(3)(C), the permittee shall apply the same or superior augmentation measures to all other lands reclaimed using the same techniques and the five (5) year period of responsibility shall recommence. The Department shall waive augmentation if the other areas have been previously augmented in a similar or superior manner or have met the revegetation success standards for cropland or the permittee can document a minimum of three (3) years of successful woody species establishment for forest products and wildlife habitat land uses as required by Section 1817.117(a). If the woody species have been planted less than three (3) years prior to the augmentation of the cropland areas, the Department shall grant additional time to evaluate the success of the woody species planting.

ii) The five (5) year period of responsibility shall not recommence on areas where the operator has met the revegetation success standards of subsection (a)(3)(E).

iii) If cropland is augmented the Department shall retain sufficient performance bond at the time of phase II performance bond release to ensure the cost of similarly augmenting all other high capability lands, if required, is covered in the remaining bond amount.

3) Ground cover and production-or-stocking shall be considered equal to the approved success standard when they are not less than ninety (90) percent of the success standard. The sampling techniques for measuring success shall use a ninety (90) percent statistical confidence interval (i.e., one-sided t test

with a 0.10 alpha error). Vegetative ground cover shall be measured using the technique set forth in 62 Ill. Adm. Code 1817.117(d). Standards for success shall be applied in accordance with the approved post-mining land use and, at a minimum, the following conditions:

- A) The vegetative ground cover for areas previously disturbed by mining operations that were not reclaimed to the requirements 62 Ill. Adm. Code 1810 through 1828, and that are remined or otherwise redisturbed by surface coal mining operations, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion;
- B) For areas to be developed for industrial, commercial or residential use less than two (2) years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion;
- C) For areas designated in the approved reclamation plan as cropland, except those cropland areas subject to 62 Ill. Adm. Code 1823.15, success of revegetation of cropland areas shall be determined in accordance with 62 Ill. Adm. Code 1816.116(a)(4). Crop production shall be considered successful if it is ninety (90) percent of that crop production required in 62 Ill. Adm. Code 1816.116(a)(4) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two (2) crop years of a ten (10) year period prior to release of the performance bond, provided crop-years-do-not-occur-before-the-fourth year-(inclusive) except the first year of the five (5) year responsibility period. During the extended five (5) year responsibility period, erosion from cropland must be minimized using equivalent or better management practices than surrounding unmined cropland. The five (5) year responsibility period shall begin after the last year of augmented seeding, fertilizing, or soil treatment and at the time of the planting of the crop(s) to be grown for the productivity showing or crops grown in rotation. Crop production for proof of productivity purposes shall be initiated within ten (10) years after completion of backfilling and final grading;
- D) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of revegetation shall be determined on the basis of tree and shrub stocking populations and

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ground cover. The tree and shrub stocking population and ground cover shall meet the standards described in Section 1817.117; and

- E) For areas designated as pasture and/or hayland or grazing land in the approved reclamation plan, except for erosion control devices and other structures (i.e., levees, ditches, waterways, impounding structures, etc.) success of revegetation (tons of grasses and/or legumes per acre) shall be determined in accordance with 62 Ill. Adm. Code 1816.116(a)(4). Productivity shall be considered successful if it is ninety (90) percent of the productivity required in 62 Ill. Adm. Code 1816.116(a)(4) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) for a minimum of any two (2) crop years of a ten (10) year period prior to release of the performance bond, provided--that--both production--years--do--not--occur--before--the--fourth--year (inclusive) except the first year of the five (5) year extended responsibility period. Revegetation success shall also be determined in accordance with Section 1816.117 (a)(2). Production for proof of productivity purposes shall be initiated within ten (10) years after completion of backfilling and final grading. On cropland-capable land, the Department shall allow the use of one (1) successful year of corn production as a substitute for one (1) successful year of hay production under this subsection.

- 4) In order to use the Agricultural Lands Productivity Formula, 62 Ill. Adm. Code 1816. Appendix A, to determine success of revegetation, the requirements of 62 Ill. Adm. Code 1816.116(a)(4) shall apply.

b) The person who conducts underground mining activities shall:

- 1) Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the Department, to identify if remedial actions are necessary during the applicable period of liability specified in subsection (a); and
- 2) Permittees shall submit by January--1 February 15 of each year a report of reclamation activities conducted during the previous calendar year using forms provided by the Department. Reclamation activities to be reported include, but are not limited to, crops used in temporary and permanent seedings, grasses and legumes planted, trees and shrubs planted, soil amendments added, and type and location of augmentation

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activities. The forms shall be submitted with a copy of the approved post-mining land use and capability map depicting the location of such activities. The map shall be planned as a continuous map so the reclamation activities conducted each year may be added and indicated on the map by the dates the activities were conducted.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 1817.117 Revegetation: Tree and Shrub Vegetation Stocking

- a) For areas to be developed for fish and wildlife habitat (including shelter belts), recreation, or forest products land uses, success of vegetation shall be determined on the basis of tree and shrub stocking population and vegetative ground cover. Such parameters are described as follows:

- 1) Trees and shrubs that will be used in determining the success of stocking vegetation and the adequacy of plant arrangement shall have utility for the approved post-mining land use. Tree and/or shrub stocking population shall be considered successful if it meets is--ninety--(90)--percent--of--the--stocking the population required in subsection (b) with ninety (90) percent statistical confidence (i.e., one-sided t test with a 0.10 alpha error) during the last year of the responsibility period. Trees and shrubs counted in determining such success shall be healthy, e.g. not demonstrating abnormal growth, coloring, leaf drop or disease. At the time of bond release such trees and shrubs shall be alive, and shall have been in place for at least three (3) growing seasons, i.e. three (3) years.
- 2) Vegetative ground cover shall not be less than required to achieve the approved post-mining land use and shall be adequate to control erosion.
- 3) Rock-areas, permanent roads and surface-water-drainage-ways, parking lots and similar impervious structures on the revegetated area shall not require stocking the planting of trees and shrubs or herbaceous ground cover.
- 4) For purposes of this Section, herbaceous species means grasses, legumes and nonleguminous forbs; woody plants means woody shrubs, trees and vines; and ground cover means the area of ground covered by the combined aboveground parts of vegetation and the litter that is produced naturally on site.
- 5) For purposes of this Section, normal husbandry and

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conservation practices shall include pruning, disease, pest, vermin and herbaceous vegetation control including mowing, replanting and rill and gully repairs. The replanting of trees and shrubs in areas described in 62 Ill. Adm. Code 1817.116(a)(2)(C) shall be limited to 20% of the original approved planting rate during the first year of the responsibility period and 10% of the original approved planting rate during the second year of the responsibility period. The repair of rills and gullies shall be limited to those approved as a normal conservation practice under 62 Ill. Adm. Code 1817.116(a)(2)(C).

- b) For areas where woody plants are used for fish and wildlife habitat (including shelter belts), or recreation land uses, the area shall have a minimum steeking population of two hundred and fifty (250) trees or shrubs per acre; where woody plants are used for forest products land uses, the area shall have a minimum steeking population of four hundred and fifty (450) trees or shrubs per acre.
- c) For areas planted to trees or shrubs including wildlife habitat (including shelter belts), recreation, and forest products land uses, the sampling procedure for measuring success-of--steeking populations is described as follows:

- 1) The permittee shall submit a scale drawing or aerial photograph delineating the area(s) to be sampled and the total number of acres in each area. A one (1) inch equals five hundred (500) feet (1:500) or larger scale shall be used.

- 2) One of the following circular plot sizes shall be selected by the sample enumerator:

Plot Size/Acres	Radius/Feet
1/160	9.31
1/120	10.75
1/100	11.78
1/90	12.41
1/80	13.17
1/70	14.07
1/60	15.20
1/50	16.65
1/40	18.61
1/30	21.50
1/20	26.33
1/10	37.24
1/5	52.66
1/4	58.88

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- 3) The number of plots needed to sample 2.5 percent of the area will be calculated employing the following formula:

Number of Plots equals 2.5 percent multiplied by Sample Area in acres divided by plot size.

- 4) Based on the number of plots needed to be sampled and plot size, locate transect lines an equal distance apart throughout the area to be sampled. Position individual plots an equal distance apart along transect lines. Determine the total length of all transect lines combined and then divide by the total number of plots needed to be sampled. When an individual plot is positioned within sixty (60) feet of the boundary of the area to be sampled, the location of the plot shall be moved perpendicular to the transect line until the plot is sixty (60) feet from the boundary of the area to be sampled or the greatest distance possible where sixty (60) feet cannot be achieved.

- 5) Sample each plot for compliance with subsections (a)(1) and (b) and record live trees and/or shrubs and species.

- 6) Calculate steeking population levels as follows:

A) Average number of live trees and/or shrubs per plot equals total number of live trees and/or shrubs divided by number of plots; and

B) Number of live trees and/or shrubs per acre equals average number of live trees and/or shrubs per plot multiplied by plot size denominator.

- 7) Representatives of the Department or the Illinois Department of Conservation shall conduct all sampling.

d) Vegetative ground cover shall be measured by the following technique:

- 1) Twenty (20) random points shall be identified in the area to be tested.

- 2) A twenty (20) foot engineer's tape shall be extended directly south of each point. If the tape extends beyond the boundary of the area to be tested or extends into an area where herbaceous ground cover has been controlled with herbicides to minimize competition with woody plants, the tape shall be rotated in ninety (90) degree increments until the entire

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twenty (20) foot length is within the boundary of the area to be tested or area not treated with the herbicide.

- 3) A measurement shall be taken at each two tenths (.2) increment directly above or below the tape.
- 4) Ground cover shall be determined to be present if any vegetation identified in Section 1817.117(a)(4) is measured at the increment.
- 5) A percentage of ground cover shall be established for the area tested by taking the total number of measurements where ground cover was determined to be present.
- 6) If the vegetative ground cover is adequate to control erosion, i.e. absence of rills and gullies, and sufficient to achieve its approved post-mining land use, the percentage of ground cover determined by this technique shall be deemed successful.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1817.150 Roads: General

Underground mining activities shall be conducted to insure the construction, maintenance, and post-mining conditions of roads into and across the site of operations will control or prevent erosion and siltation; pollution of water; damage to fish and wildlife or their habitat; or public or private property.

a) Road classification system.

- 1) Each road, as defined in 62 Ill. Adm. Code 1701. Appendix A, shall be classified as either a primary road or an ancillary road.
- 2) A primary road is any road which is:
 - A) Used for transporting coal or spoil;
 - B) Frequently used for access or other purposes for a period in excess of six months; or
 - C) To be retained for an approved post-mining land use.
- 3) An ancillary road is any road not classified as a primary road.
- b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as

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to:

- 1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.
- 2) Control or prevent damage to fish, wildlife, or their habitat and related environmental values;
- 3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area.
- 4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;
- 5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;
- 6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and
- 7) Use nonacid- and nontoxic-forming substances in road surfacing.
- c) Design and construction limits and establishment of design criteria. To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size in accordance with current, prudent engineering practices, and any necessary design criteria established by the Department.
- d) Location.

- 1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the Department in accordance with applicable sections of

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62 Ill. Adm. Code 1817.41 through 1817.43 and 1817.57.

- 2) Roads shall be located to minimize downstream sedimentation and flooding.

e) Maintenance.

- 1) A road shall be maintained to meet the performance standards of this Section in accordance with prudent engineering and maintenance practices.

- 2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

- f) Reclamation. A road not to be retained under an approved post-mining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

- 1) Closing the road to traffic;
- 2) Removing all bridges and culverts unless approved as part of the post-mining land use;
- 3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the post-mining land use and revegetation requirements;
- 4) Reshaping cut and fill slopes as necessary to be compatible with the post-mining land use and to complement the natural drainage pattern of the surrounding terrain;
- 5) Protecting the natural drainage patterns by installing dikes or cross-drains as necessary to control surface runoff and erosion; and
- 6) Scarifying or ripping the roadbed, replacing topsoil or substitute material, and revegetating disturbed surfaces in accordance with 62 Ill. Adm. Code 1817.22 and 1817.111 through 1817.117.

(Source: Amended at 111. Reg. _____, effective _____)

Section 1817.151 Primary roads. Primary roads shall meet the requirements of Section 1817.150 and the additional requirements of this Section.

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- a) Certification. The construction or reconstruction of primary roads shall be certified in a report to the Department by a qualified registered professional engineer. The professional engineer shall be experienced in the construction of roads, as evidenced by the placement of a registered professional engineer's seal on the report. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

- b) Safety Factor. Each primary road embankment shall have a minimum static factor of 1.3.

c) Location.

- 1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

- 2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the Department as temporary routes during periods of road construction.

d) Drainage control. In accordance with the approved plan:

- 1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross-drains and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour precipitation event, or greater event as specified by the Department as necessary to ensure proper drainage control design in accordance with prudent engineering practices.

- 2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to prevent or control erosion at inlets and outlets.

- 3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.

- 4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

- 5) Natural stream channels shall not be altered or relocated without the prior approval of the Department in accordance with applicable sections of 62 Ill. Adm. Code 1817.41 through

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1817.43 and 1817.57; and

- 6) Except as provided in Section 1817.151(c)(2), structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The Department shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to steamflow.

- e) Surfacing. Primary roads shall be surfaced with material approved by the Department as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(Source: Added at 111. Reg. _____, effective _____)

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- 1) The Heading of the Part: Permit Applications--Minimum Requirements for Legal, Financial, Compliance, and Related Information
- 2) Code Citation: 62 Ill. Adm. Code 1778
- 3) Section Number: 1778.14
Proposed Action: Amended
- 4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96-1/2, pars. 7901.01 et seq.).
- 5) A complete description of the subjects and issues involved: On November 2, 1990, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) Springfield Field Office Director sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current federal regulations.

The following discussion describes the proposed amendments of Part 1778 in response to OSMRE's directive.

Section 1778.14 sets forth permit application requirements regarding violation information. The first proposed amendment to subsection (c) clarifies that the reference to the Federal Surface Mining Control and Reclamation Act includes all state programs approved thereunder. The second proposed amendment to subsection (c) clarifies that the violation reporting requirements apply only to Federal laws or regulations pertaining to air or water environmental protection, rather than every violation of a Federal law or regulation. The proposed amendments serve to make the rule no less effective than its counterpart federal rule, 30 CFR 778.14.

- 6) Will this proposed rule replace an emergency rule currently in effect?
No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Do these proposed amendments contain incorporations by reference? No

- 9) Are there any other amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

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Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Comments must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991
- B) Types of small businesses affected: This rulemaking does not affect small businesses.
- C) Reporting, bookkeeping or other procedures required for compliance: None
- D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1778

PERMIT APPLICATIONS--MINIMUM REQUIREMENTS
FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Section

- 1778.4 Responsibility (Repealed)
- 1778.11 Applicability (Repealed)
- 1778.13 Identification of Interests
- 1778.14 Violation Information
- 1778.15 Right of Entry Information
- 1778.16 Relationship to Areas Designated Unsuitable for Mining
- 1778.17 Permit Term
- 1778.18 Insurance
- 1778.20 Identification of Location of Public Office for Filing of Application (Repealed)
- 1778.21 Proof of Publication
- 1778.22 Facilities or Structures Used in Common

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9348; amended at 11 Ill. Reg. 8368, effective July 1, 1987; amended at 14 Ill. Reg. 11873, effective January 1, 1991; amended at Ill. Reg. _____, effective _____.

Section 1778.14 Violation Information

An application shall contain the following:

- a) A statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:
 - 1) Had a Federal or State coal mining permit suspended or revoked in the last five (5) years preceding the date of submission of the application; or
 - 2) Forfeited a performance bond or similar security deposited in lieu of bond.
- b) If any such suspension, revocation, or forfeiture has occurred, a statement of the facts involved, including:

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- 1) Identification number and date of issuance of the permit and the date and amount of bond or similar security;
- 2) Identification of the authority that suspended or revoked a permit or forfeited a bond and the stated reasons for that action;
- 3) The current status of the permit, bond, or similar security involved;
- 4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
- 5) The current status of these proceedings.

c) For any violation of a provision of the Federal Act (Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.), a provision of a State regulatory program approved pursuant to the Federal Act or of any law, rule or regulation of the United States, or of any State law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

- 1) Any identifying numbers for the operation, including the Federal or State permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;
- 2) A brief description of the violation alleged in the notice;
- 3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in subsection (c) to obtain administrative or judicial review of the violations;

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- 4) The current status of the proceedings and of the violation notice; and
 - 5) The actions, if any, taken by any person identified in subsection (c) to abate the violation.
- d) Information about the applicant's present financial condition which would provide assurance to the Department that no further forfeiture would be expected.
- e) After an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this Section. Information submitted as a change shall be evaluated in the same manner as the original application.

Source: Amended at ___ Ill. Reg. ___, effective _____)

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- 1) The Heading of the Part: Requirements for Coal Exploration

- 2) Code Citation: 62 Ill. Adm. Code 1772

- 3) Section Number:
1772.11 Amended
1772.14 Amended

- 4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

- 5) A complete description of the subjects and issues involved:

On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with and no less effective than current Federal regulations, pursuant to 30 CFR 732.17. Section 1772.14 was one of Illinois' regulations identified by OSMRE as being inconsistent with federal requirements. In addition, the Department has identified outdated material in Section 1772.11 which it now proposes to correct.

Part 1772 sets forth requirements for coal exploration. The Department is proposing to amend Section 1772.11 by updating the oil and gas forms which are referenced in subsection (b)(5).

In response to OSMRE's September 20, 1989 directive, the Department proposes to amend Section 1772.14 by expanding its scope to apply to commercial use as well as sale, and by adding application requirements for coal exploration. The proposed amendments serve to make the Department's regulations consistent with federal counterpart regulations at 30 CFR 772.14.

- 6) Will this proposed rule replace an emergency rule currently in effect?
No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Do these proposed amendments contain incorporations by reference? No

- 9) Are there any other amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: The proposed amendments will have no impacts on local units of government.

- 11) Time, Place, and Manner in which interested persons may comment on this

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NOTICE OF PROPOSED AMENDMENT(S)

proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

- 12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

- B) Types of small businesses affected: This rulemaking may affect independently owned and operated coal mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have gross annual sales of less than \$4 million.

- C) Reporting, bookkeeping or other procedures required for compliance: Small businesses intending to use or sell coal extracted under an exploration permit must first obtain a surface coal mining and reclamation operations permit unless the sale or commercial use is for coal testing purposes only.

- D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1772
REQUIREMENTS FOR COAL EXPLORATION

- Section
1772.11 Scope and Purpose
1772.12 Notice Requirements for Exploration Removing 250 Tons of Coal or Less
1772.13 Permit Requirements for Exploration Removing More Than 250 Tons of Coal
1772.14 Coal Exploration Compliance Duties
1772.15 Requirements for Commercial Use or Sale
1772.16 Public Availability of Information

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7905.01, 7905.02, 7905.03 and 7909.01).

SOURCE: Adopted at 11 Ill. Reg. 8385, effective July 1, 1987; amended at 14 Ill. Reg. 11860, effective January 1, 1991; amended at ____ Ill. Reg. _____, effective _____.

Section 1772.11 Notice Requirements for Exploration Removing 250 Tons of Coal or Less

- a) Any person who intends to conduct coal exploration operations outside the permit area during which less than two hundred and fifty (250) tons of coal will be removed shall prior to conducting the exploration, file with the Illinois Department of Mines and Minerals (Department) a written notice of intention to explore.
- b) The notice shall include:
- 1) The name, address, and telephone number of the person seeking to explore;
 - 2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;
 - 3) A statement of the period of intended exploration, and a precise narrative or other specific description of the location of the intended exploration which identifies which Sections will be affected;
 - 4) A description of the method of exploration to be used and the practices that will be followed to protect the environment and

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to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of 62 Ill. Adm. Code 1815;

- 5) In addition, the notice shall include a copy of a fully executed "Notice of Intent and Application for Blanket Authorization to Drill Coal Test Holes Test Hole Permit" (Form G-14-B OG-7) or "Notice of Intent and Application for Individual Authorization to Drill a Coal Test Hole Record and Plugging Affidavit" (Form OG-14-A8). Forms are available from the Oil and Gas Division of the Department which will supervise closure in accordance with 62 Ill. Adm. Code 240.

- c) A notice of intention to explore is not an application for a permit. (Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1772.14 Requirements for Commercial Use or Sale

Any person who extracts coal for commercial sale during coal exploration operations shall obtain a surface coal mining and reclamation operations permit for those operations from the Department under 62 Ill. Adm. Code 1773 through 1785. No surface coal mining and reclamation operations permit is required if the Department makes prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

- (a) Except as provided under 62 Ill. Adm. Code 1772.14(b) and 1700.11(a)(3), any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the Department under 62 Ill. Adm. Code 1773 through 1785.

- (b) With the prior written approval of the Department, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the Department. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing coal. The application shall contain the following:

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- (1) The name of the testing firm and the locations at which the coal will be tested.
- (2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user, or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:
- (A) The specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;
- (B) the amount of coal necessary for the test and why a lesser amount is not sufficient; and
- (C) a description of the specific tests that will be conducted.
- (3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.
- (4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

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- 1) The Heading of the Part: Requirements for Permits and Permit Processing
- 2) Code Citation: 62 Ill. Adm. Code 1773
- 3) Section Number:
 1773.5 Proposed Action:
 1773.11 Amended
 1773.15 Amended
 1773.17 Amended
- 4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).
- 5) A complete description of the subjects and issues involved:
 On August 29, 1990, the Federal Office of Surface Mining Reclamation of Enforcement (OSMRE), by final rule, instructed the Illinois Department of Mines and Minerals (Department) to submit a proposed amendment to Section 1773.5 in order to be consistent with the OSMRE counterpart regulation, 30 CFR 773.5. See 55 Fed. Reg. 35301, 35313 (August 29, 1990).
 On November 2, 1990 and December 21, 1990, OSMRE's Springfield Field Office Director sent the Department letters identifying changes necessary to make Illinois' regulations consistent with and no less effective than counterpart Federal regulations.
 The following discussion describes the proposed amendments of Part 1773 in response to OSMRE's concerns and directives.
 The Department proposes to amend Section 1773.5 by replacing the word "or" with the word "and" in order to be consistent with the federal counterpart rule.
 The proposed amendment to Section 1773.11(a) corrects a clerical error identified in OSMRE's November 2, 1990 letter to the Department. The amendment to Section 1773.11(b)(1)(C) corrects the date within the statutory citation.
 Section 1773.15 sets forth requirements for the Department's review of permit applications. The proposed amendment to subsection (b)(1) clarifies that the provision applies to all unabated enforcement actions and delinquent civil penalties incurred under any State program pursuant to the Federal Surface Mining Control and Reclamation Act, not just those actions and penalties issued by Illinois or OSMRE. The amendment responds to OSMRE's concern raised in its December 21, 1990 letter to the Department. The proposed amendment to subsection (b)(1)(B)

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clarifies that the rule is not limited to administrative and judicial appeal decisions of violations issued by Illinois, but also applies to administrative and judicial appeal decisions concerning violations issued by regulatory authorities other than the Department. The amendment responds to OSMRE's concern raised in its November 21, 1990 letter to the Department.

Section 1773.17 sets forth conditions applicable to permits issued by the Department. The proposed amendment to subsection (h) clarifies that the provision applies whenever a cessation order is issued, regardless of whether it is issued by the Department or by OSMRE. The amendment serves to make the regulation no less effective than OSMRE's counterpart regulation, 30 CFR 773.17(i).

- 6) Will this proposed rule replace an emergency rule currently in effect?
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: The proposed amendment will have no impact on local units of government.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on

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Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991
- B) Types of small businesses affected: This rulemaking does not affect small businesses.
- C) Reporting, bookkeeping or other procedures required for compliance: None
- D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1773

REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Section

- 1773.1 Scope and Purpose
- 1773.5 Definitions
- 1773.11 Requirements to Obtain Permits
- 1773.12 Regulatory Coordination with Requirements under Other Laws
- 1773.13 Public Participation in Permit Processing
- 1773.14 Opportunity for Public Hearing
- 1773.15 Review of Permit Applications
- 1773.17 Permit Conditions
- 1773.19 Permit Issuance and Right of Renewal
- 1773.20 Improvidently Issued Permits: General Procedures
- 1773.21 Improvidently Issued Permits: Rescission Procedures

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 11 Ill. Reg. 8395, effective July 1, 1987; amended at 14 Ill. Reg. 11886, effective January 1, 1991; amended at ____ Ill. Reg. _____, effective _____.

Section 1773.5 Definitions

For purposes of this Part, owned or controlled and owns or controls means any one or a combination of the relationships specified in subsections (a) ~~or~~ and (b) below:

- a) Ownership or control is evidenced by:
 - 1) Being a permittee of a surface coal mining operation;
 - 2) Based on instruments of ownership or voting securities, owning of record in excess of fifty (50) percent of an entity; or
 - 3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations.
- b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or

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indirectly to determine the manner in which the relevant surface coal mining operation is conducted.

- 1) Being an officer or director of an entity;
- 2) Being the operator of a surface coal mining operation;
- 3) Having the ability to commit the financial or real property assets or working resources of an entity;
- 4) Being a general partner in a partnership;
- 5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten (10) through fifty (50) percent of the entity; or
- 6) Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(Source: Amended at ____ Ill. Reg. _____, effective _____)

Section 1773.11 Requirements to Obtain Permits

a) All operations.

On and after February 1, 1983, no person shall engage in or carry out any surface coal mining operations on non-Federal or non-Indian Lands within the State, unless such person has first been issued a permanent regulatory program permit by the Illinois Department of Mines and Minerals (Department), except as provided for in subsection (b). A permittee need not renew the permit if no surface coal mining operations will be conducted under the permit and solely reclamation activities remain to be done. Obligations established under a permit continue until completion of surface coal mining and reclamation operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.

b) Continuation of interim regulatory program operations.

- 1) A person authorized to conduct surface coal mining and reclamation operations under a permit issued or amended by the Department in accordance with the requirements of the interim regulatory program may conduct such operations beyond February

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1, 1983, if:

A) Not later than August 3, 1982, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after February 1, 1983, in accordance with the provisions of the permanent program;

B) The Department has not yet rendered an initial administrative decision approving or disapproving the permit; and

C) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) (Federal Act), the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 19879, ch. 96 1/2, pars. 7901.01 et seq.) (State Act), 62 Ill. Adm. Code 1800 through 1850 and all terms and conditions of the interim program permit.

2) No new interim program permits shall be issued.

(Source: Amended at ___ Ill. Reg. ____, effective _____)

Section 1773.15 Review of Permit Applications

a) General.

1) The Department shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, in accordance with Section 1773.19, either granting, requiring modification of, or denying the application. If an informal conference is held under Section 1773.13(c), the decision shall be made within sixty (60) days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under subsection (b)(3).

2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

b) Review of violations.

1) Based on available information concerning Federal and State

failure-to-abate cessation orders, as defined in 62 Ill. Adm. Code 1843.11(b) or under the counterpart rule of another State regulatory authority, unabated Federal and State imminent harm cessation orders, as defined in 62 Ill. Adm. Code 1843.11(a) or under the counterpart rule of another State regulatory authority, delinquent civil penalties issued pursuant to Section 8.04 of the State Act and Section 518 of the Federal Act or pursuant to the counterpart provision of another State regulatory program, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of Federal and State laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the Department shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of the State Act, Federal Act or any other law, rule or regulation referred to in this subsection. In the absence of a failure-to-abate cessation order, the Department may presume that a notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the Department shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

A) Submit to the Department proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

B) Establish for the Department that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the circuit court reviewing the violation, pursuant to 62 Ill. Adm. Code 1775.13 or in accordance with the procedures established by other State regulatory authorities, either denies a stay applied for in the appeal or affirms the violation, then the applicant shall submit the proof required under

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subsection (b)(1)(A) within thirty (30) days of the court's decision.

- 2) Any permit that is issued on the basis of proof submitted under subsection (b)(1)(A) that a violation is in the process of being corrected, or pending the outcome of an appeal described in subsection (b)(1)(B), shall be conditionally issued.
- 3) If the Department makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Federal or State Acts of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Federal or State Acts, the application shall be denied. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 62 Ill. Adm. Code 1775.11.

c) Written findings for permit application approval.

No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

- 1) The application is complete and accurate and the applicant has complied with all requirements of the Federal Act, State Act and the regulatory program.
- 2) The applicant has demonstrated that reclamation as required by the Federal Act, State Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.
- 3) The proposed permit area or the proposed shadow area for a planned subsidence operation is:
 - A) Not within an area under study or administrative proceedings under a petition, filed pursuant to 62 Ill. Adm. Code 1764, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977,

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he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

- B) Not within an area designated as unsuitable for mining pursuant to 62 Ill. Adm. Code 1762 and 1764 or subject to the prohibitions or limitations of 62 Ill. Adm. Code 1761.11 and 1761.12.
- 4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the Department the documentation required under 62 Ill. Adm. Code 1778.15(b).
- 5) The Department has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area, in accordance with 62 Ill. Adm. Code 1780 and 1784 and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
- 6) The applicant has demonstrated that any existing structure will comply with 62 Ill. Adm. Code 1700.11(d).
- 7) The applicant has paid all reclamation fees from previous and existing operations as required by 30 CFR 870.
- 8) The applicant has satisfied the applicable requirements of 62 Ill. Adm. Code 1785.
- 9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural post-mining land use, in accordance with the requirements of 62 Ill. Adm. Code 1816.111(d) and 1817.111(d).
- 10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- 11) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.106 or 1817.106, the site of the operation is a previously mined area as defined in 62 Ill. Adm. Code 1701 Appendix A.

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12) The Department has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the Department has determined that no additional measures are necessary.

d) Performance bond submittal.

If the Department decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 62 Ill. Adm. Code 1800.

e) Final compliance review. After an application is approved, but before the permit is issued, the Department shall reconsider its decision to approve the application, based on the compliance review required by subsection (b)(1), in light of any new information submitted under 62 Ill. Adm. Code 1778.13(i) and 1778.14(e).

(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 1773.17 Permit Conditions

Each permit issued by the Department shall be subject to the following conditions:

- a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to 62 Ill. Adm. Code 1800.
- b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the Department otherwise directs in the permit.
- c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Federal and State Acts, and the requirements of the regulatory program.
- d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Department and Secretary of the United States Department of the Interior to:

- 1) Have the right of entry provided for in 62 Ill. Adm. Code 1840.12; and
- 2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with 62 Ill. Adm. Code 1840, when the inspection is in response to an alleged violation reported to the Department by the private person.

e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

- 1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;
- 2) Immediate implementation of measures necessary to comply; and
- 3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

f) As applicable, the permittee shall comply with 62 Ill. Adm. Code 1700.11(d) for compliance, modification, or abandonment of existing structures.

g) The operator shall pay all reclamation fees required by 30 CFR 870 for coal produced under the permit for sale, transfer or use.

h) Within thirty (30) days after a cessation order is issued under 62 Ill. Adm. Code Section 1843.11 or 30 CFR 843.11, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect the permittee shall either submit to the Department the following information, current to the date the cessation order was issued, or notify the Department in writing that there has been no change since the immediately preceding submittal of such information:

- 1) Any new information needed to correct or update the information previously submitted to the Department by the permittee under 62 Ill. Adm. Code 1778.13(c); or
- 2) If not previously submitted, the information required from a permit applicant by 62 Ill. Adm. Code 1778.13(c).

(Source: Amended at ___ Ill. Reg. ___, effective _____)

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1) The Heading of the Part: Revision: Renewal; and Transfer, Assignment, or Sale of Permit Rights

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

2) Code Citation: 62 Ill. Adm. Code 1774

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

3) Section Number:
1774.13

Proposed Action:
Amended

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

5) A complete description of the subjects and issues involved:

Section 1774.13 sets forth the Illinois Department of Mines and Minerals' (Department) regulations concerning permit revision requirements. The proposed amendment to subsection (b)(1), which gives the Department ninety (90) days rather than (30) days to approve or disapprove applications for insignificant permit revisions, is more in keeping with the realities of insignificant permit revision reviews. The proposed ninety (90) day limit remedies the recurring situation where the Department is required to deny an application for insignificant permit revision simply because it needs additional information from the applicant which takes longer than thirty (30) days to provide.

6) Will this proposed rule replace an emergency rule currently in effect?
No

D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendment will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking does not affect small businesses.

C) Reporting, bookkeeping or other procedures required for compliance:
None

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TITLE 62: MINING
CHAPTER 1: DEPARTMENT OF MINES AND MINERALS

PART 1774

REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

Section

1774.1 Scope and Purpose
1774.11 Department Review of Permits
1774.13 Permit Revisions
1774.15 Permit Renewals
1774.17 Transfer, Assignment, or Sale of Permit Rights

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 11 Ill. Reg. 8469, effective July 1, 1987; amended at 14 Ill. Reg. 11900, effective January 1, 1991; amended at ____ Ill. Reg. ____, effective ____.

Section 1774.13 Permit Revisions

a) During the term of a permit, the permittee may submit an application to the Department for a revision of the permit. Such application may be made on the standard Department permit form; however, only those sections of the form which pertain to the revision in question must be completed.

b) Application Requirements and Procedures.

1) The Department will approve or disapprove applications for insignificant revisions within thirty (30) ninety (90) days after receipt of the application; applications for significant revision will be acted upon in accordance with 62 Ill. Adm. Code 1773.13 and 1773.15.

2) A significant revision to a permit shall be obtained for changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. For purpose of these requirements, significant departures from the methods or conduct of mining or reclamation operations include any change in such mining or reclamation operations, except the following, if not contemplated or provided for in the original permit:

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- c)
- A) For surface mines, changes of direction of mining or location of mining equipment within the permit area;
 - B) Substitution of mining equipment designed for the same purpose, the use of which is not detrimental to the achievement of final reclamation or subsidence control;
 - C) For underground mines, any change in direction or location of mining within the permit area or shadow area, in response to unanticipated events;
 - D) Any other change in operations, methods, or conduct of mining described in writing to the Department which the Department excuses in writing from requirement of revision on a case-by-case basis after determining that the described change will have no significant potential adverse impact on the achievement of final reclamation plans or subsidence control plans or upon the surrounding area;
 - E) Any alteration in the reclamation plan or reclamation operations which does not involve significant delay or any change in land use described in writing to the Department and excused from this requirement of revision on a case-by-case basis; or
 - F) Any temporary change in operations, subsidence control or reclamation plans necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee, after review and approval by the Department in writing, provided that all steps specified by the Department to maximize environmental protection are taken.
- 3) All significant permit revision applications shall meet the requirements of 62 Ill. Adm. Code 1773.13, 1773.19(b)(1) and (3) and 1778.21.
- c) No application for a permit revision shall be approved unless the application demonstrates and the Department finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under 62 Ill. Adm. Code 1773.15(c) which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

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- d) Extensions of the permit area, except for incidental boundary revisions, shall be made by application for a new permit, and shall not be approved under this Part. Extensions of the shadow area, except for incidental boundary revisions, shall be made and approved pursuant to the requirements of this Part. Application for incidental boundary revisions shall be made pursuant to subsection 1774.13(a). Incidental boundary revisions are those which:

- 1) Constitute a relatively small percentage of the initial permit acreage;
- 2) Are contiguous with the permit acreage;
- 3) Are required for the orderly and continuous mining operation;
- 4) Would be reclaimed in conformity with the initial plan;
- 5) For the purpose of this section, incidental boundary changes are described as follows:

Original Permit Acres	Maximum Size of Boundary Changes-Acres
Up to 10	1
Up to 25	2.5
Up to 50	5
Up to 75	7.5
Up to 100	10
Over 100	20

- 6) A determination as to what constitutes a significant departure shall be made by the Department in consultation with the permittee. Changes which do not alter the final reclamation or mining plan are considered minor and do not require permit revision. However, any request for such changes shall be included in a written request to the Department.

(Source: Amended at ____ Ill. Reg. ____, effective ____)

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NOTICE OF PROPOSED AMENDMENT(S)

- 1) The Heading of the Part: Special Program Performance Standards on Prime Farmland
- 2) Code Citation: 62 Ill. Adm. Code 1823
- 3) Section Number: 1823.14
Amended
1823.15
Amended
- 4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

- 5) A complete description of the subjects and issues involved:

On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

The following discussion describes the proposed amendments of Part 1823 in response to OSMRE's directive.

Section 1823.14 sets forth the Department's soil replacement requirements on prime farmland. Proposed new subsection (g) requires that prime farmland have a planned erosion control system in certain specified instances. The proposed amendment is in response to OSMRE's September 20, 1989 directive regarding the repair of rills and gullies and is referenced in 62 Ill. Adm. Code 1816.116.

Section 1823.15 sets forth the Department's requirements for revegetation requirements on prime farmland. The proposed amendment to subsection (b)(3) is in response to OSMRE's September 20, 1989 directive. Additionally, a clerical error was corrected in subsection (b)(3).

- 6) Will this proposed rule replace an emergency rule currently in effect?
No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Do these proposed amendments contain incorporations by reference? Yes

- 9) Are there any other amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: The proposed amendments will

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have no impact on local units of government.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

- 12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991
- B) Types of small businesses affected: This rulemaking does not affect small businesses.
- C) Reporting, bookkeeping or other procedures required for compliance:
None
- D) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1823

SPECIAL PROGRAM PERFORMANCE STANDARDS--
OPERATIONS ON PRIME FARMLAND

- Section
1823.1 Scope
1823.2 Objective
1823.11 Prime Farmland: Special Requirements
1823.12 Prime Farmland: Soil Removal
1823.13 Prime Farmland: Soil Stockpiling
1823.14 Prime Farmland: Soil Replacement
1823.15 Prime Farmland: Revegetation

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; emergency amendment at 6 Ill. Reg. 8502, effective July 1, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 9987, effective September 3, 1982; codified at 8 Ill. Reg. 9361; amended at 10 Ill. Reg. 9631, effective July 1, 1986; amended at ____ Ill. Reg. ____, effective ____.

Section 1823.14 Prime Farmland: Soil Replacement

Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:

a)

- 1) The minimum depth of soil and soil material to be reconstructed for prime farmland shall be forty-eight (48) inches except where a natural rock formation occurs at shallower depths. The Department shall specify a depth greater than forty-eight (48) inches wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths; and
- 2) Section 1823.14(a)(1) and (d) shall not apply to prime farmland and fragipan soils. Prime farmland fragipan soil shall be reconstructed in accordance with 62 Ill. Adm. Code 1825.14(a)(1), (a)(2), (a)(3), and (a)(5). For the purposes of this provision, prime farmland fragipan soils are specific soils classified as prime farmland that are underlain with a diagnostic subsurface horizon designated as a fragipan by the Soil Conservation Service of the U.S. Department of

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Agriculture according to the criteria set in Soil Taxonomy, U.S.D.A. Handbook AH 436, including the following soils found in Illinois: Ava, Grantsburg, and Hosmer series as defined by the Soil Interpretation Sheets of the Soil Conservation Service.

- b) Replace soil material only on land which has been first returned to final grade and scarified according to 62 Ill. Adm. Code 1816.101 through 1816.105 or 62 Ill. Adm. Code 1817.101 through 1817.105, unless site-specific evidence is provided and approved by the Department showing that scarification will not enhance the capability of the recommended soil to achieve equivalent or higher levels of yield;
- c) Replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction;
- d) Replace the B horizon or other suitable material specified in Section 1823.12(a)(2) and (a)(3) to the thickness needed to meet the requirements of paragraph (a) of this Section;
- e) Replace the A horizon or other suitable soil materials specified in Section 1823.12(a)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original soil, as determined in 62 Ill. Adm. Code 1785.17(b)(1)(B) and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted; and
- f) Apply nutrients and soil amendments as needed to quickly establish vegetative growth.

g) Prime farmland shall have a planned erosion control system if expected soil loss from row crop production will exceed the tolerable soil loss limits as defined by "Resource Conservation Planning Technical Material-IL-4" (May 12, 1977). "Resource Conservation Planning Technical Material-IL-4", issued by the U.S. Department of Agriculture, Soil Conservation Service, located at 1902 Fox Drive, Champaign, Illinois 61820, is hereby incorporated by reference and does not include later editions or amendments. Terrace systems, when utilized as part of a planned erosion control system, shall be constructed according to U.S. Department of Agriculture, Soil Conservation Service specifications. Erosion control plans in compliance with this subsection shall be submitted to and approved by the Department after final grading based on seasonal factors, the extent of the area, and the sophistication of the erosion control plan.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

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Section 1823.15 Prime Farmland: Revegetation

Each person who conducts surface coal mining and reclamation operations on prime farmland regardless of whether such land has been drilled, blasted, or mined, shall meet the following revegetation requirements during reclamation:

- a) Following soil replacement, that person shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion. All vegetation shall be in compliance with the plan approved by the Department under 62 Ill. Adm. Code 1785.17 and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of 62 Ill. Adm. Code 1816.113 and 1816.114 or 62 Ill. Adm. Code 1817.113 and 1817.114 shall be met.
- b) Measurement of success of prime farmland revegetation shall be conducted in accordance with the following provisions:
 - 1) Measurement of success of revegetation shall be initiated within ten (10) years after completion of backfilling and final grading of areas of prime farmland in accordance with the approved reclamation plan.
 - 2) Success of revegetation shall be measured in accordance with 62 Ill. Adm. Code 1816.116(a)(4).
 - 3) Revegetation shall be considered a success when crop production is equivalent to or exceeds the production required in 62 Ill. Adm. Code 1816.116(a)(4), with ninety (90) percent statistical confidence (i.e., one-sided t test with 0.10 alpha error) for a minimum of three (3) crop years of a ten (10) year period, provided that all three (3) crop years do not occur before the fourth year--inclusive) except the first year after augmented seeding, fertilizing, or other management practices, prior to release of the operator's performance bond. The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area. The five (5) year period of extended responsibility shall begin after the last year of augmented seeding, fertilizing or soil treatment and at the time of the planting of the crop(s) to be grown for the productivity showing.
 - 4) Compliance with this subsection shall not preclude a permittee from demonstrating the required soil productivity under the law by use of soil surveys or other techniques approved consistent with future regulations.

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(Source: Amended at Ill. Reg. _____, effective _____)

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NOTICE OF PROPOSED AMENDMENT(S)

- 1) The Heading of the Part: Surface Mining Permit Application--Minimum Requirements for Reclamation and Operation Plan
- 2) Code Citation: 62 Ill. Adm. Code 1780
- 3) Section Number: Proposed Action
 1780.16 Amended
 1780.37 Amended
 1780.39 New Section
- 4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

- 5) A complete description of the subjects and issues involved:

On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

On November 2, 1990, OSMRE sent the Department a letter identifying certain typographical errors in the Department's rules which must be amended.

The following discussion describes the proposed amendments of Part 1780 in response to OSMRE's directives.

A typographical error was corrected in Section 1780.16(b)(3)(B).

Section 1780.37 sets forth the Department's requirements regarding transportation facilities which must be included in an application for a surface mining permit. Proposed new subsection (a)(5) adds drawings and specifications for proposed stream forks to be used as temporary routes to the permit application requirements. Proposed new subsection (a)(7) adds removal and reclamation plans and schedules for all roads which are not proposed for retention as part of the post-mining land use to the permit application requirements. Proposed new subsection (b) requires that primary road plans and drawings be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

Proposed new Section 1780.39 requires each applicant for a surface coal mining and reclamation operations permit to submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

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The proposed amendments to Part 1780 serve to make the Department's permit application requirements consistent with and no less effective than OSMRE's counterpart regulations at 30 CFR 780.37 and 780.38.

independently owned and operated coal mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have annual sales of less than \$4 million.

- 6) Will this proposed rule replace an emergency rule currently in effect?
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

- C) Reporting, bookkeeping or other procedures required for compliance: All applications for a surface coal mining and reclamation operations permit must contain drawings and specifications for each proposed stream ford used as a temporary route and must describe the applicant's plans for removal and reclamation of temporary roads. Applications must also include plans and drawings for each support facility within the proposed permit area. Primary road plans and drawings must be prepared by, or under the direction of, and certified by a qualified registered professional engineer.
- D) Types of professional skills necessary for compliance: Professional engineer.

Written comments regarding this proposal should be sent to:

The full text of the Proposed Amendments begins on the next page.

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. All comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991, at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991
- B) Types of small businesses affected: This rulemaking may affect

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1780

SURFACE MINING PERMIT APPLICATION--MINIMUM
REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Section	Responsibilities
1780.4	Use of Existing Data
1780.5	Use of Expert Opinion
1780.6	Operation Plan: General Requirements
1780.11	Operation Plan: Existing Structures
1780.12	Operation Plan: Blasting
1780.13	Operation Plan: Maps and Plans
1780.14	Air Pollution Control Plan
1780.15	Fish and Wildlife Plan
1780.16	Reclamation Plan: General Requirements
1780.18	Hydrologic Information
1780.21	Geologic Information
1780.22	Reclamation Plan: Post-mining Land Uses
1780.23	Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
1780.25	Reclamation Plan: Surface Mining Near Underground Mining
1780.27	Diversions
1780.29	Protection of Public Parks and Historic Places
1780.31	Relocation or Use of Public Roads
1780.33	Disposal of Excess Spoil
1780.35	Transportation Facilities
1780.37	Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities
1780.38	Support Facilities
1780.39	

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, P. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 8511; amended at 11 Ill. Reg. 8602, effective July 1, 1987; amended at 14 Ill. Reg. 11911, effective January 1, 1991; amended at ____ Ill. Reg. _____, effective _____.

Section 1780.16 Fish and Wildlife Plan

- a) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.

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- 1) The scope and level of detail for such information shall be determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under subsection (b).

A) Prior to initiating such studies, the applicant shall contact the Department to determine, in accordance with subsection (a)(1)(B), what fish and wildlife resources information will be required.

B) The Department, in consultation with the Illinois Department of Conservation, shall determine the level of detail and the areas of such studies according to:

- i) Published data and other pertinent unpublished information;
- ii) Site-specific information obtained by the applicant; and
- iii) Written guidance obtained from agencies consulted.

- 2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:

- A) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) or those species or habitats protected by the Illinois Endangered Species Protection Act, Ill. Rev. Stat. 1987, ch. 8, par. 331 et seq.;
- B) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or
- C) Other species or habitats identified through agency consultation as requiring special protection under State or Federal law.

- b) Protection and enhancement plan. Each application shall include a description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and

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adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall--

- 1) Be consistent with the requirements of 62 Ill. Adm. Code 1816.97;
- 2) Apply, at a minimum, to species and habitats identified under subsection (a); and
- 3) Include--
 - A) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and
 - B) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

- c) Fish and Wildlife Service review. Upon request, the Department shall provide the resource information required under subsection (a) and the protection and enhancement plan required under subsection (b) to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 1780.37 Transportation Facilities

- a) Each application shall contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and the following:

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- a1) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;
- b2) A report of appropriate geotechnical analysis, where approval of the Department is required for alternative specifications, or for steep cut slopes under 62 Ill. Adm. Code 1816.150;
- c3) A description of measures to be taken to obtain approval of the Department for alteration or relocation of a natural drainageway under 62 Ill. Adm. Code 1816.150;
- d4) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the Department under 62 Ill. Adm. Code 1816.150;
- 5) The drawings and specifications for each proposed ford of a perennial or intermittent stream that is used as a temporary route, as necessary for approval of the ford by the Department in accordance with 62 Ill. Adm. Code 1816.151(c)(2);
- e6) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area;
- 7) A description of the plans to remove and reclaim each road that would not be retained under an approved post-mining land use, and the schedule for this removal and reclamation.

- b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of 62 Ill. Adm. Code 1816.150 and 1816.151 in accordance with prudent engineering practices. The professional engineer shall be experienced in the construction of roads, as evidenced by the placement of a registered professional engineer's seal on the certification.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

Section 1780.39 Support Facilities

Each applicant for a surface coal mining and reclamation operations permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross-sections, design drawings, and specifications sufficient to demonstrate compliance with 62

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Ill. Adm. Code 1816.181 for each facility.

(Source: Added at ___ Ill. Reg. ___, effective _____)

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NOTICE OF PROPOSED AMENDMENT(S)

1) The Heading of the Part: Underground Mining Permit Applications--Minimum Requirements for Reclamation and Operation Plan

2) Code Citation: 62 Ill. Adm. Code 1784

3) Section Number:
 1784.21 Proposed Action
 1784.24 Amended
 1784.30 Amended
 New Section

4) Statutory Authority: Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

5) A complete description of the subjects and issues involved:

On September 20, 1989, the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) sent the Illinois Department of Mines and Minerals (Department) a letter identifying a series of Illinois regulations that must be amended in order to become consistent with current Federal regulations, pursuant to 30 CFR 732.17.

On December 21, 1990, OSMRE sent the Department another letter identifying a series of Illinois regulations that must be amended in order to be as effective as the corresponding federal rules.

The following discussion describes the proposed amendments of Part 1784 in response to OSMRE's directive.

Section 1784.21 sets forth the Department's requirements regarding fish and wildlife plans which must be included in an application for an underground mining permit. The proposed amendment to subsection (a)(2)(C) serves to make Illinois' requirements consistent with OSMRE's counterpart regulation, 30 CFR 784.21, which does not restrict the special protection to just the Endangered Species Act of 1973 or the Illinois Endangered Species Protection Act.

Section 1784.24 sets forth the Department's requirements regarding transportation facilities which must be included in an application for an underground mining permit. Proposed new subsection (a)(5) adds drawings and specifications for proposed stream ford to be used as temporary routes to the permit application requirements. Proposed new subsection (a)(7) adds removal and reclamation plans and schedules for all roads which are not proposed for retention as part of the post-mining land use to the permit application requirements. Proposed new subsection (b) requires that primary road plans and drawings be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

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Proposed new Section 1784.30 requires each applicant for an underground coal mining and reclamation operations permit to submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

The proposed amendments to Part 1784 serve to make the Department's permit application requirements consistent with and no less effective than OSMRE's counterpart regulations at 30 CFR 784.21, 784.24 and 784.30.

Will this proposed rule replace an emergency rule currently in effect?
No

Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed amendments will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Written comments regarding this proposal should be sent to:

Karen Jacobs, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
P.O. Box 10137
Springfield, IL 62791-0137

Commenters must provide a name and address. All comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 pm. on Friday, March 22, 1991. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on Tuesday, March 5, 1991 at 1:00 p.m., in the Department's Conference Room located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.

12) Initial Regulatory Flexibility Analysis:

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A) Date rule was submitted to the Small Business Office of the Department of Commerce and Community Affairs: January 25, 1991

B) Types of small businesses affected: This rulemaking may affect independently owned and operated coal mines or businesses which are not dominant in their field and which employ fewer than fifty (50) full-time employees or which have annual sales of less than \$4 million.

C) Reporting, bookkeeping or other procedures required for compliance:
All applications for an underground coal mining and reclamation operations permit must contain drawings and specifications for each proposed stream ford used as a temporary route and must describe the applicant's plans for removal and reclamation of temporary roads. Applications must also include plans and drawings for each support facility within the proposed permit area. Primary road plans and drawings must be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

D) Types of professional skills necessary for compliance:
Professional Engineer.

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING

CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1784

UNDERGROUND MINING PERMIT APPLICATIONS--MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

Section

- 1784.4 Responsibilities
- 1784.5 Use of Existing Data
- 1784.6 Use of Expert Opinion
- 1784.11 Operation Plan: General Requirements
- 1784.12 Operation Plan: Existing Structures
- 1784.13 Reclamation Plan: General Requirements
- 1784.14 Hydrologic Information
- 1784.15 Reclamation Plan: Post-mining Land Uses
- 1784.16 Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments
- 1784.17 Protection of Public Parks and Historic Places
- 1784.18 Relocation or Use of Public Roads
- 1784.19 Underground Development Waste
- 1784.20 Subsidence Control Plan
- 1784.21 Fish and Wildlife Plan
- 1784.22 Geologic Information
- 1784.23 Operation Plan: Maps and Plans
- 1784.24 Transportation Facilities
- 1784.25 Return of Coal Processing Waste to Abandoned Underground Workings
- 1784.26 Air Pollution Control Plan
- 1784.27 Rehabilitation of Siltation Structures, Diversions, Impoundments, and Treatment Facilities
- 1784.29 Diversion
- 1784.30 Support Facilities

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1989, ch. 96 1/2, pars. 7901.01 et seq.).

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 9350; amended at 11 Ill. Reg. 8652, effective July 1, 1987; amended at 14 Ill. Reg. 1935, effective January 1, 1991; amended at ____ Ill. Reg. _____, effective _____.

Section 1784.21 Fish and Wildlife Plan

- a) Resource information. Each application shall include fish and wildlife resource information for the permit area and adjacent area.
- 1) The scope and level of detail for such information shall be

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determined by the Department in consultation with State and Federal agencies with responsibilities for fish and wildlife and shall be sufficient to design the protection and enhancement plan required under subsection (b).

- A) Prior to initiating such studies, the applicant shall contact the Department to determine, in accordance with subsection (B), what fish and wildlife resources information will be required.
- B) The Department, in consultation with the Illinois Department of Conservation, shall determine the level of detail and the areas of such studies according to:
 - i) Published data and other pertinent unpublished information;
 - ii) Site-specific information obtained by the applicant; and
 - iii) Written guidance obtained from agencies consulted.
- 2) Site-specific resource information necessary to address the respective species or habitats shall be required when the permit area or adjacent area is likely to include:
 - A) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) or those species or habitats protected by the Illinois Endangered Species Protection Act, Ill. Rev. Stat. 19879, ch. 8, par. 331 et seq.;
 - B) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or
 - C) Other species or habitats identified through agency consultation as requiring special protection under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) or the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 19879, ch. 8, par. 331 et seq.), or other applicable State or Federal law.
- b) Protection and enhancement plan. Each application shall include a

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description of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations and how enhancement of these resources will be achieved where practicable. This description shall --

- 1) Be consistent with the requirements of 62 Ill. Adm. Code 1817.97;
- 2) Apply, at a minimum, to species and habitats identified under subsection (a); and
- 3) Include--

A) Protective measures that will be used during the active mining phase of operation. Such measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

B) Enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Such measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

- c) Fish and Wildlife Service review. Upon request, the Department shall provide the resource information required under subsection (a) and the protection and enhancement plan required under subsection (b) to the U.S. Department of the Interior, Fish and Wildlife Service Regional or Field Office for their review. This information shall be provided within 10 days of receipt of the request from the Service.

(Source: Amended Ill. Reg. _____, effective _____)

Section 1784.24 Transportation Facilities

- a) Each application shall contain a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a

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map, appropriate cross-sections, and the following:

- a1) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

- b2) A report of appropriate geotechnical analysis, where approval of the Department is required for alternative specifications or for steep cut slopes under 62 Ill. Adm. Code 1817.150;

- e3) A description of each measure to be taken to obtain approval of the Department for alteration or relocation of a natural drainageway under 62 Ill. Adm. Code 1817.150;

- d4) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the Department under 62 Ill. Adm. Code 1817.150;

- 5) The drawings and specifications for each proposed ford of a perennial or intermittent stream that is used as a temporary route, as necessary for approval of the ford by the Department in accordance with 62 Ill. Adm. Code 1817.151(c)(2);

- e6) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area;

- 7) A description of the plans to remove and reclaim each road that would not be retained under an approved post-mining land use, and the schedule for this removal and reclamation.

- b) Primary road certification. The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer as meeting the requirements of 62 Ill. Adm. Code 1817.150 and 1817.151 in accordance with prudent engineering practices. The professional engineer shall be experienced in the construction of roads, as evidenced by the placement of a registered professional engineer's seal on the certification.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 1784.30 Support Facilities

Each applicant for an underground coal mining and reclamation operations permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit

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area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with 62 Ill. Adm. Code 1817.181 for each facility.

(Source: Added at Ill. Reg. _____, effective _____.)

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1) **Heading of the Part:** ACCREDITING PERSONS IN THE PRACTICE OF MEDICAL
RADIATION TECHNOLOGY

2) **Code Citation:** 32 Ill. Adm. Code 401

3) Section Number:	Proposed Action:
401.20	Amendment
401.30	Amendment
401.40	Amendment
401.50	Amendment
401.60	Amendment
401.70	Amendment
401.80	Amendment
401.100	Amendment
401.110	Amendment
401.130	Amendment
401.140	New Section
401.APPENDIX A	New Section
401.APPENDIX B	

4) **Statutory Authority:** Implementing and authorized by Sections 5, 6, 7 and 36 of the Radiation Protection Act of 1990 (P. A. 86-1341, effective September 7, 1990).

5) **A Complete Description of the Subjects and Issues Involved:** The Department is proposing these amendments to implement the provisions of the Radiation Protection Act of 1990 (the Act) pertaining to accreditation of persons to perform a limited scope of diagnostic radiography procedures of the chest, the extremities, the skull and sinuses, or the spine. Section 6(c) of the Act directs the Department to promulgate rules establishing standards and procedures for accrediting such persons. As specified in Section 6(c) of the Act, the Department's proposed amendments would require any individual seeking limited scope accreditation to register with the Department as a "student-in-training", and would allow such individual to perform diagnostic radiography procedures while under the supervision of a person licensed under the Medical Practice Act of 1987. The proposed amendments also specify the tests that will be administered to persons seeking accreditation to perform a limited scope of diagnostic radiography procedures and require applicants for such accreditation to take the examination within eight months of registering with the Department. The proposed amendments provide standards for disqualifying any trainer whose effectiveness, as demonstrated by the examination pass rates of the individuals the trainer has been responsible for training, is unacceptable. The proposed amendments establishes an examination fee for the limited accreditation as well as a fee for accreditation to perform a limited scope of diagnostic radiography procedures.

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In addition to establishing procedures and standards for limited scope accreditation, the proposed amendments would make two modifications to the continuing education requirement. The Department is proposing to add a continuing education requirement for limited medical radiographers (6 units per year). The Department is also proposing to require that all accredited technologists obtain at least 6 units per year in courses related to radiologic sciences. Radiologic Technologists who are required to earn more than 6 units of continuing education per year may fulfill the balance of the requirement by taking courses related to patient care.

Finally, the proposed amendments would change the definitions of "medical radiographer" and "nuclear medicine technologist". These definitions are being modified to clarify that those individuals may administer radiopharmaceuticals and related drugs for diagnostic purposes.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: The requirements imposed by the proposed rulemaking are not expected to require local governments to establish, expand, or modify their activities in such a way as to necessitate additional expenditures from local revenues.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. The Department will consider fully all written comments on this proposed rulemaking submitted during the 45 day comment period. Comments should be submitted to:

Betsy Salus
Senior Staff Attorney
Department of Nuclear Safety
1035 Outer Park Drive
Springfield, Illinois 62704
785-9880

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12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 22, 1991
- B) Types of small businesses affected: By providing an alternative standard and procedure for accreditation of individuals who perform a limited scope of diagnostic radiography procedures, these rules will have a direct beneficial impact on small medical practices that employ radiologic technologists to administer radiation to humans.
- C) Reporting, bookkeeping or other procedures required for compliance: No reporting, bookkeeping, or other procedures would be required for compliance. Students-in-training will have to register with the Department. Individuals seeking accreditation to perform a limited scope of diagnostic radiography procedure will have to successfully complete an examination.
- D) Types of professional skills necessary for compliance: Competence in radiologic technology is necessary for compliance with this rule.

The full text of the Proposed Amendment begins on the next page:

TITLE 32: ENERGYCHAPTER II: DEPARTMENT OF NUCLEAR SAFETYSUBCHAPTER b: RADIATION PROTECTION

PART 401ACCREDITING PERSONS IN THE PRACTICE OF MEDICAL RADIATION TECHNOLOGY

Section	401.10	Policy and Scope
	401.20	Definitions
	401.30	Exemptions
	401.40	Application for Accreditation
	401.50	Categories of Accreditation
	401.60	Examination Requirements
	401.70	Acceptable Examinations
	401.80	Approved Program
	401.90	Practice Requirement - Initial Licensure (Repealed)
	401.100	Initial Issuance of Accreditation
	401.110	Duration of Accreditation
	401.120	Suspension and Revocation of Accreditation
	401.130	Fees
	401.140	Requirements for Renewal of Accreditation
	401.150	Reciprocity
	401.160	Minimum Course of Education (Repealed)
	401.170	Civil Penalties
	401.APPENDIX A	Limited Radiography Procedures by type of Limited Accreditation
	401.APPENDIX B	Example Topics Directly Related to Radiologic Sciences

AUTHORITY: Adopted at 7 Ill. Reg. 17318, effective January 1, 1984; Emergency amendment at 8 Ill. Reg. 17584, effective September 12, 1984, for a maximum of 150 days; amended at 9 Ill. Reg. 2499, effective February 13, 1985; amended at 10 Ill. Reg. 13259, effective July 28, 1986; amended at 11 Ill. Reg. 15623, effective September 11, 1987; Emergency amendment at 11 Ill. Reg. 17977, effective November 24, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 7603, effective April 18, 1988; amended at 12 Ill. Reg. 18164, effective January 1, 1989; amended at 13 Ill. Reg. 15005, effective September 11, 1989; amended at 14 Ill. Reg. 15341, effective September 4, 1990; amended at 15 Ill. Reg. _____. effective _____.

SOURCE: Adopted at 7 Ill. Reg. 17318, effective January 1, 1984; Emergency amendment at 8 Ill. Reg. 17584, effective September 12, 1984, for a maximum of 150 days; amended at 9 Ill. Reg. 2499, effective February 13, 1985; amended at 10 Ill. Reg. 13259, effective July 28, 1986; amended at 11 Ill. Reg. 15623, effective September 11, 1987; Emergency amendment at 11 Ill. Reg. 17977, effective November 24, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 7603, effective April 18, 1988; amended at 12 Ill. Reg. 18164, effective January 1, 1989; amended at 13 Ill. Reg. 15005, effective September 11, 1989; amended at 14 Ill. Reg. 15341, effective September 4, 1990; amended at 15 Ill. Reg. _____. effective _____.

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"Department" - Means the Illinois Department of Nuclear Safety.

"Direct Supervision" - An individual is in the physical presence of a licensed practitioner or medical radiation technologist who holds active status accreditation and assists, evaluates and approves of the individual's performance of the various tasks involved in the application of ionizing radiation.

"Director" - Means the Director of the Department of Nuclear Safety.

"Ionizing Radiation" - Means gamma rays, and x-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared or ultraviolet light.

"In vitro" - Isolated from the living organism.

"In vivo" - Occurring within the living organism.

"Licensed Practitioner" - A person licensed or otherwise authorized by law to practice medicine, dentistry, osteopathy, chiropractic or podiatry.

"Limited Medical Radiographer-Chest" - A person, other than a practitioner, who, while under the supervision of a licensed practitioner, applies x-radiation to the human chest for diagnostic purposes.

"Limited Medical Radiographer-Extremities" - A person, other than a practitioner, who, while under the supervision of a licensed practitioner, applies x-radiation to the human extremities for diagnostic purposes.

"Limited Medical Radiographer-Skull/Sinuses" - A person, other than a practitioner, who, while under the supervision of a licensed practitioner, applies x-radiation to the human skull/sinuses for diagnostic purposes.

"Limited Medical Radiographer-Spine" - A person, other than a practitioner, who, while under the supervision of a licensed practitioner, applies x-radiation to the human spine for diagnostic purposes.

AGENCY NOTE: Specific radiographic examinations appropriate to each type of limited radiography accreditation may be found in Appendix A.

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"Medical Radiation Technology" - The science and art of performing medical radiation procedures involving the application of ionizing radiation to human beings for diagnostic and therapeutic purposes. The five specialized disciplines of Medical Radiation Technology are Medical Radiography, Nuclear Medicine Technology, Radiation Therapy Technology, Chiropractic Radiography, and Podiatric Radiography.

"Medical Radiographer" - A person, other than a licensed practitioner, who, while under the supervision of a licensed practitioner, applies x-radiation to any part of the human body and administers contrast agents and related drugs for diagnostic purposes.

"Medical Radiography" - The science and art of applying x-radiation to human beings for diagnostic purposes.

"Nuclear Medicine Technologist" - A person, other than a licensed practitioner, who, administers radiopharmaceuticals and related drugs to human beings for diagnostic purposes, performs in vivo and in vitro detection and measurement of radioactivity and the administration of administers radiopharmaceuticals to human beings for diagnostic and therapeutic purposes. A nuclear medicine technologist may perform such procedures only while under the supervision of a licensed practitioner who is licensed to possess and use radioactive materials.

"Nuclear Medicine Technology" - The science and art of in vivo and in vitro detection and measurement of radioactivity and the administration of radiopharmaceuticals to human beings for diagnostic and therapeutic purposes.

"Radiation Therapy Technologist Therapist" - A person, other than a licensed practitioner, who performs procedures and applies ionizing radiation emitted from x-ray machines, particle accelerators, or sealed radioactive sources to human beings for therapeutic purposes while under the supervision of a licensed practitioner who is licensed, as required, to possess and use radioactive materials.

"Radiation Therapy Technology" - The science and art of applying ionizing radiation emitted from x-ray machines, particle accelerators and sealed radioactive sources to human beings for therapeutic purposes.

"Supervision" - Responsibility for, and control of, quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

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(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 401.30 Exemptions

- a) Nothing in the Act or this Part shall be construed to limit or affect in any respect, the practice of persons properly licensed under other statutes or regulations with respect to their professions.
- b) The Department shall, upon application therefor or upon its own initiative, grant such exemptions or exceptions from the requirements of this Part as it determines are authorized by law and will not result in a hazard to public health and safety.
- c) Exemptions shall include:

- 1) A student enrolled in an approved program applicable to his/her profession who, as a part of his/her course of study, applies ionizing radiation to human beings while under the supervision of a licensed practitioner.
- 2) A person registered with the Department as a student-in-training in limited medical radiography pursuant to Section 401.80(c) who applies ionizing radiation to human beings while under the supervision of a licensed practitioner, provided that the procedures performed shall be limited to the procedures as listed in Appendix A, applicable to the particular limited status of medical radiography for which the student is registered. This exemption shall only apply to individuals who are registered with the Department and shall only apply for 16 months.
- 2 3) A person licensed to practice a treatment of human ailments by virtue of the Medical Practice Act of 1987 (Ill. Rev. Stat. 1989, ch. 111, par. 4400-1 et seq.), the Illinois Dental Practice Act (Ill. Rev. Stat. 1989, ch. 111, par. 2301 et seq.), or the Podiatric Medical Practice Act of 1987 (Ill. Rev. Stat. 1989, ch. 111, par. 4801 et seq.) (Section 4 5 of the Act)
- 3 4) A person employed as a dental assistant who performs dental radiography for a licensed dentist.
- 4 5) A technician, nurse or other assistant who performs radiography under the supervision of a person licensed under the Podiatric Medical Practice Act of 1987. (Section 4-1 6 of the Act)

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- 6 6) A person who holds Conditional Accreditation Type II issued in accordance with Section 401.100(d) during such time as that person is under the direct supervision of a licensed practitioner or medical radiation technologist who holds active status accreditation for purposes of being instructed in the use of equipment and/or procedures other than those for which the person is currently accredited.

- 6 7) A nurse, technician, or other assistant who, under the supervision of a person licensed under the Medical Practice Act of 1987, administers radiation to human beings, but only when such administration is performed on employees of a business at a medical facility owned and operated by that business. (Section 4-1 6 of the Act)

(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 401.40 Application for Accreditation

Any person applying for initial accreditation or renewal of accreditation must submit a complete and legible application form, must pay the appropriate application fee in accordance with Section 401.130, and must provide evidence that he/she has met the requirements for the given category and status of accreditation which is sought. Persons applying for Active Status Accreditation shall submit evidence of registration, Board certification, or other examination as appropriate pursuant to Section 401.70. Persons applying for limited status accreditation in Medical Radiography (i.e., limited-chest, limited-extremities, limited-skull/sinuses and limited-spine) shall submit evidence that they have passed the required examinations as specified in Section 401.60 (d-g). Persons applying for Temporary Accreditation shall submit evidence of graduation from an approved program. Fees and charges collected by the Department shall be paid into the Radiation Protection Fund. Such fees and charges shall be used to defray costs incurred in the administration of this program. Accreditation shall be valid for a specified period of time and shall entitle the individual to privileges consistent with the category and status of accreditation indicated unless the accreditation is suspended or revoked in accordance with Section 401.120.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 401.50 Categories of Accreditation

- a) The Department shall accredit persons in the practice of Medical Radiation Technology in one or more of these specific categories:
 - 1) Medical Radiography;

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- 2) Nuclear Medicine Technology;
 - 3) Radiation Therapy Technology; and
 - 4) Chiropractic Radiography.
- b) The Department shall recognize ~~three~~ the following status conditions for any category the categories of accreditation as follows:
- 1) Active - An applicant who meets the requirements as set forth in Section 401.100(a).
 - 2) Temporary - An applicant who meets the requirements as set forth in Section 401.100(b).
 - 3) Conditional - An applicant who meets the requirements as set forth in Section 401.100(c), or (d).
 - 4) Limited-Chest - An applicant who meets the requirements as set forth in Section 401.100(e). This status condition is applicable to the category of Medical Radiography only.
 - 5) Limited-Extremities - An applicant who meets the requirements as set forth in Section 401.100(e). This status condition is applicable to the category of Medical Radiography only.
 - 6) Limited-Skull/Sinuses - An applicant who meets the requirements as set forth in Section 401.100(e). This status condition is applicable to the category of Medical Radiography only.
 - 7) Limited-Spine - An applicant who meets the requirements as set forth in Section 401.100(e). This status condition is applicable to the category of Medical Radiography only.

(Source: Amended at ___ Ill. Reg. ___, effective _____)
Section 401.60 Examination Requirements

- a) Active - Persons who seek active status accreditation in medical radiation technology must pass a written examination as appropriate to the category of accreditation sought in accordance with Section 401.70.

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- b) Temporary - Persons who seek active status accreditation and are awaiting the successful completion of an examination in accordance with Section 401.70 may apply for and be issued temporary accreditation. Temporary accreditation shall be valid until the person has passed the appropriate examination and has applied for and been issued active status accreditation. In no case shall temporary accreditation be valid for more than two years from the date of issuance.
- c) Conditional - Examination shall not be required for conditional accreditation.
- d) Limited Medical Radiographer-Chest - Persons who seek accreditation to perform radiography of the chest, but not any other parts of the body, must pass a written examination on general radiography topics and a written or practical examination on chest anatomy and clinical skills required to perform radiography of the chest in accordance with Section 401.70(c).
- e) Limited Medical Radiographer-Extremities - Persons who seek accreditation to perform radiography of the extremities, but not any other parts of the body, must pass a written examination on general radiography topics and a written or practical examination on anatomy of the extremities and clinical skills required to perform radiography of the extremities in accordance with Section 401.70(c).
- f) Limited Medical Radiographer-Skull/Sinuses - Persons who seek accreditation to perform radiography of the skull and or sinuses, but not any other parts of the body, must pass a written examination on general radiography topics and a written or practical examination on anatomy of the skull and sinuses and clinical skills required to perform radiography of the skull and sinuses in accordance with Section 401.70(c).
- g) Limited Medical Radiographer-Spine - Persons who seek accreditation to perform radiography of the spine, but not any other parts of the body, must pass a written examination on general radiography topics and a written or practical examination on anatomy of the spine and clinical skills required to perform radiography of the spine in accordance with Section 401.70(c).

AGENCY NOTE: Persons may seek accreditation in more than one category of limited accreditation.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

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Section 401.70 Acceptable Examinations

- a) The Department shall accept for, issuance of Active Status Accreditation, examinations as identified by this Section. Accreditation shall be specific to the category of examination as specified in subsection (b) of this Section.
- b) Examinations as appropriate to category of accreditation are as follows:

- 1) Medical Radiography
 - The American Registry of Radiologic Technologists (R) (A.R.R.T.).
- 2) Nuclear Medicine Technology
 - The American Registry of Radiologic Technologists (N) (A.R.R.T.), the Nuclear Medicine Technology Certification Board (N.M.T.C.B.), the American Society of Clinical Pathologists (NM) (A.S.C.P.).
- 3) Radiation Therapy Technology
 - The American Registry of Radiologic Technologists (T) (A.R.R.T.).
- 4) Chiropractic Radiography
 - American Chiropractic Registry of Radiologic Technologists (ACRRT), provided that the examination was administered after June 30, 1984.

- c) Examinations in Limited Medical Radiography - Applicants for limited status accreditation in one or more areas of medical radiography shall have passed a written examination on general radiographic topics and a written or practical examination specific to the type of limited accreditation sought. All written examinations shall be approved by and scheduled through the Department. The passing score for written examinations shall be a scaled score of 75 percent. All practical examinations shall cover items prescribed by the Department. Practical examinations may be administered by a technologist who holds active accreditation in radiography and is a full-time faculty member of an approved program as defined in Section 401.80 or by a licensed practitioner, certified as a radiologist by the American Board of Radiology. Practical examinations shall be graded on a pass/fail basis on forms provided by the Department.

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- e d) Examinations by other certifying organizations shall be accepted upon written request to the Department, provided that the Department finds that the certifying organization has met the National Commission for Health Certifying Agencies (NCHCA) requirements. (Publication Title: Perspectives on Health Occupational Credentialing) Contract #232-78-0187, dated September 30, 1979, DHHS Publication No. (HRA) 81-4, U.S. Government Printing Office, Washington, D. C. 20402.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 401.80 Approved Program

- a) The Department shall base its approval of didactic and clinical education for Medical Radiography, Nuclear Medicine Technology, or Radiation Therapy Technology on the standards accepted by the Committee on Allied Health Education and Accreditation (CAHEA). (Specific information concerning these standards is available from the Committee on Allied Health Education and Accreditation of the American Medical Association and from the Department. These standards are entitled: Essentials and Guidelines of an Accredited Education Program for the Radiation Therapy Technologist (1983); Essentials and Guidelines of an Accredited Educational Program for the Radiographer (1983); Essentials of an Accredited Educational Program for the Nuclear Medicine Technologist (1984), and do not include subsequent amendments or editions).
- b) The Department shall base its approval of didactic and clinical education in Chiropractic Radiography on the standards accepted by the Chiropractic Council on Education (CCE), published January 27, 1985, exclusive of subsequent amendments or editions. Specific information concerning these standards is available from the Department or from the Chiropractic Council on Education, 3209 Ingersoll Avenue, Des Moines, Iowa 50312. Student exemption for persons enrolled in an approved Chiropractic Radiography program shall not exceed 12 months.
- c) The Department shall base its approval of didactic and clinical education in Limited Medical Radiography on standards contained in the "Curriculum Guide for Limited Permittee Programs", June 1987, exclusive of subsequent amendments or editions. Copies of these standards are available from the American Society of Radiologic Technologists, 15000 Central Avenue South East, Albuquerque, New Mexico, 87123. Students-in-training in Limited Medical Radiography shall be registered with the Department on forms provided by the Department. Registration with the Department shall include application and payment of applicable fees for examination. Students-in-training in Limited Medical Radiography may not begin application of ionizing radiation to humans prior to the

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Department's approval of the student's proposed training as identified through the student-in-training registration process. The Department shall refuse to register an individual as a student-in-training when the party(s) responsible for the training of said student has demonstrated poor training of students as evidenced by either a cumulative failure rate in excess of 50 percent of the trainer's students or two consecutive students who fail the examinations specified in Section 401.70(c). If the employer is not identified as the party responsible for training the student, the Department shall register an individual as a student-in-training in the employer's practice only if the student is concurrently enrolled in a program that meets the minimum requirements for a training program in limited radiography established by the Joint Review Committee on Education in Radiologic Technology, published 1990, by the Joint Review Committee on Education, 20 N. Wacker Drive, Suite 900, Chicago, Illinois 60606-2901. Students-in-training in Limited Medical Radiography shall take the appropriate written or written and practical examinations not later than the eighth month of training. Students may not perform radiographic procedures beyond the 16 months of training unless the required examinations have been passed.

(Source: Amended at Ill. Reg. _____, effective _____)

Section 401.100 Initial Issuance of Accreditation

- a) The Department shall issue Active Status Accreditation in a category of medical radiation technology to persons who have passed an examination as indicated in Section 401.70(b). Active Status Accreditation issued after January 1, 1988, shall be valid for two years from the date of issuance.
- b) The Department shall issue Temporary Accreditation in a category of medical radiation technology and chiropractic radiography to persons who are awaiting an examination in accordance with Section 401.70(b) and have completed an approved program. Applicants for Temporary Accreditation must provide specific evidence of the intent to take such an examination, the category of examination to be taken, and the date on which the examination will be taken. Temporary Accreditation shall convey the same rights as the Active Status Accreditation for which the individual is awaiting examination. Temporary Accreditation shall be valid until such time as the individual successfully completes the appropriate examination and applies for and is issued Active Status Accreditation in accordance with subsection (a), but in no instance longer than twenty-four (24) months from the date of issuance for medical radiation technology and no longer than twelve (12) months from the date of issuance for chiropractic radiography.

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- c) The Department shall issue Conditional Accreditation Type I in a category of medical radiation technology upon determining that community hardship exists. When making a determination of the existence of community hardship, the Department will consult Health Systems Agencies or County or Local Health Departments, and will evaluate the availability of alternative radiology services and trained personnel. In addition, the Department shall require the applicant's employer or prospective employer to demonstrate that recruitment of qualified personnel, at competitive compensation, has been attempted and unsuccessful. Such demonstration can take the form of documented advertising in publications intended to reach radiologic technologists. If based on the information submitted, the Department determines that qualified personnel cannot be recruited, and that the people in the locality in which the conditional accreditation is sought would be denied adequate health care because of the unavailability of appropriately accredited persons, the Department shall issue Conditional Accreditation Type I which shall be valid for a period of twenty-four (24) months from the date of issuance.
- d) The Department shall issue Conditional Accreditation Type II in a category of medical radiation technology to any person who, twenty-four (24) months prior to July 1, 1989, was employed in medical radiation technology and who otherwise does not meet the qualifications for accreditation. Conditional accreditation issued pursuant to this Section shall be valid for two years from date of issuance. Issuance shall be contingent upon submitting a written Statement of Assurance that the person is competent to apply ionizing radiation to human beings. A Statement of Assurance submitted to the Department in accordance with this Section shall specify the nature of the equipment and procedures which the individual is competent to utilize. The Statement of Assurance must be provided by a licensed practitioner under whose supervision the individual is employed or has been employed at some time within the last twelve months. Conditional accreditation which is issued pursuant to this Section shall be specific to the procedures and equipment indicated in the Statement of Assurance. An individual who is accredited in accordance with this Section may expand the accreditation to additional procedures and/or equipment by receiving training in accordance with Section 401.30(c)(3). After such training, the individual may submit an additional Statement of Assurance from a licensed practitioner under whose supervision the individual is employed as to the additional equipment and procedures which the individual is competent to utilize. However, an individual may not become accredited pursuant to the provisions of this Section for equipment or procedures outside of those in the category of initial accreditation. Nothing in this Section should be interpreted to limit an individual's right to make application for and be issued Active

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Status Accreditation in accordance with subsection (a). The Department shall not issue Conditional Accreditation Type II as provided by this Section after September 7, 1990. However, Conditional Accreditation Type II issued on or before September 7, 1990, may be renewed in accordance with Section 401.140.

- e) The Department shall issue limited status accreditation in one or more areas of Medical Radiography Accreditation to persons who have passed examinations as indicated in Section 401.70(C). Such accreditation shall be valid for two years from the date of issuance.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 401.110 Duration of Accreditation

- a) The duration of initial issuance of Active Status Accreditation, regardless of the category of medical radiation technology, shall be two (2) years. Active Status Accreditation shall be renewable for periods of two years in accordance with meeting the requirements in Section 401.140.

- b) The duration of Temporary Accreditation shall not exceed two years for the categories of Radiography, Nuclear Medicine Technology, or Radiation Therapy Technology and shall not exceed one year for Chiropractic Radiography. Temporary Accreditation shall not be renewed.

- c) The duration of initial issuance of Conditional Accreditation Type I shall be two years and shall be renewable thereafter for periods of two years. Such renewal shall be based on a re-evaluation by the Department of a condition of community hardship and meeting the requirements of Section 401.140.

- d) The duration of initial issuance of Conditional Accreditation Type II shall be two years. This accreditation shall be renewable for periods of two years in accordance with meeting the requirements in Section 401.140. The renewed accreditation shall be specific to the procedures and equipment indicated in the most recent Statement of Assurance which has been presented to the Department in accordance with Section 401.100(d).

- e) The duration of initial issuance of limited status accreditation in Medical Radiography shall be two years. This accreditation shall be renewable for periods of two years in accordance with meeting the requirements in Section 401.140.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

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Section 401.130 Fees

- a) The fees for accreditation in all categories shall be non-refundable and shall be as follows:

- 1) For applications filed before January 1, 1991:

- A) Initial Accreditation - Active, Conditional or Temporary Status: \$30.00 per application

- B) Renewal of Accreditation - Active and Conditional Status:

\$30.00 per application

- 2) For applications filed on or after January 1, 1991:

- A) Initial Accreditation - Active, Conditional, or Temporary or Limited Status: \$40.00 per application

- B) Renewal of Accreditation - Active, and Conditional, or Limited Status:

\$40.00 per application

- 3) Examination fee for Limited Accreditation shall be \$30.00.

- b) The appropriate fees are to accompany the application when filing with the Department. An application is filed on the date that it is received by the Department or on the date that it is postmarked by the United States Postal Service, whichever is earlier.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

Section 401.140 Requirements for Renewal of Accreditation

- a) Prerequisites

- 1) An individual must make application for renewal of accreditation on or before the expiration date of the accreditation. Accreditation shall lapse if not renewed within this time period. An individual may not legally perform medical radiation technology without valid accreditation. Nothing in this Section shall be interpreted to preclude an individual from seeking the renewal of lapsed accreditation.

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- 2) Each applicant shall submit a complete and legible application with the fee for renewal of accreditation in accordance with Section 401.130. Submission of an application for renewal shall hold the prior accreditation valid until such time as the Department acts to grant or deny renewal of accreditation. The Department will grant or deny renewal of accreditation within ninety (90) days of receipt of application for renewal.
- b) Continuing Education Requirements
- All applicants for renewal of accreditation, regardless of the category or status of accreditation sought to be renewed, must provide evidence of having participated in an approved program of continuing education as indicated below:
- 1) The required effort in continuing education per year for each category of medical radiation technology, applicable to each year elapsed since the most recent date of issuance of accreditation is as follows:

A) Radiography	12 units
B) Nuclear Medicine Technology	12 units
C) Radiation Therapy Technology	12 units
D) Chiropractic Radiography	12 units
E) <u>Limited Medical Radiography</u>	<u>6 units</u>
 - 2) The continuing education effort may be averaged during the period to which the requirement applies and shall be prorated by month. Individual courses may be applicable to more than one category of accreditation. The Department will base its approval on the relevance of the course work or training to the category or categories of current accreditation. In establishing relevancy, the Department will use standards such as are accepted by the Verification of Involvement in Continuing Education (V.O.I.C.E.), Evidence of Continuing Education (E.C.E.), Continuing Medical Education (C.M.E.), and Continuing Education Units (C.E.U.). The Department will also accept relevant course work from accredited colleges and universities to satisfy this requirement.
 - 3) Credit for continuing education other than as indicated above shall be granted by the Department if the individual or activity sponsor seeks approval of the course or activity and the Department finds that the course or activity will be consistent with courses approved in accordance with Section 401.140(b)(1).

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- 4) The basis for a unit of continuing education credit shall be the contact hour (50 minutes) of lecture. Activity other than lecture shall be approved for credit by the Department based upon the standards of subsection (b)(2).
- 5) In each category of accreditation the applicant for renewal shall have completed a minimum of 6 units of continuing education for each year elapsed since the most recent date of issuance of accreditation in continuing education in subject matter directly related to radiologic sciences. The balance of the requirement may be accomplished in subject matter directly related to patient care in the radiologic environment.

AGENCY NOTE: Applicants may refer to Appendix B for examples of specifically related continuing education subjects.

- c) Nonrenewal of Accreditation
 - 1) The Department shall not renew an individual's accreditation if he/she fails to present satisfactory evidence that he/she possesses the necessary qualifications for accreditation, and that he/she has participated in an approved continuing education program in accordance with this Part.
 - 2) If the Department does not find satisfactory evidence that the individual meets these requirements, the Department shall, within ninety (90) days of receipt of the application for renewal of accreditation, send the individual a Notice of Intent Not to Renew Accreditation. This notice shall include the area(s) of deficiency and the individual's rights as set forth in this Section.
 - 3) The individual may, within fifteen (15) days of the date of receipt of the Notice of Intent Not to Renew Accreditation, resubmit an application for renewal of accreditation which provides additional information to the Department in order to establish that the identified area(s) of deficiency have been met or corrected. The Department shall act upon such resubmission within thirty (30) days of receipt. Submission of such an application shall hold the prior accreditation valid until the Department acts on the application.
 - 4) After receipt of a Notice of Intent Not to Renew Accreditation in accordance with subsections (2) or (3), the individual may request a hearing. Such request must be made within thirty (30) days of the date of receipt of the Notice of Intent Not to Renew

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Accreditation. The hearing shall be held in accordance with 32 Ill. Adm. Code 200, except that the applicant shall have the burden of proof of establishing that he/she has met the necessary qualifications for renewal of accreditation. Submission of a request for a hearing shall hold the prior accreditation valid until the individual's receipt of a decision pursuant to the hearing.

- 5) If the applicant does not request a hearing within thirty (30) days of receipt of a Notice of Intent Not to Renew Accreditation in accordance with subsections (2) or (3), the Department shall issue a Notice of Nonrenewal.
- 6) An individual's current credential shall be invalid as of the date of his/her receipt of a Notice of Nonrenewal pursuant to subsection (5) or a decision issued after a hearing in accordance with subsection (4) of this Section.
- 7) If an individual's accreditation is not renewed, he/she shall have the right at any time to submit an application for renewal of accreditation. Such application shall be reviewed and processed in accordance with the requirements of this Section except that an individual may not legally apply for ionizing radiation to human beings until and unless the Department has acted to grant such application for renewal of accreditation.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

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401. APPENDIX A Limited Radiography Procedures by Type of Limited Accreditation

- a) Limited Medical Radiography - Chest
 - Chest: Routine P.A. and Lateral
 - Chest: Lateral Decubitus, Apical Lordotic, Obliques
- b) Limited Medical Radiography - Extremities
 - Fingers
 - Hand
 - Wrist
 - Forearm
 - Elbow
 - Humerus
 - Shoulder
 - Clavicle
 - Scapula
 - Toes
 - Foot
 - Ankle
 - Lower leg
 - Knee
 - Patella
 - Femur
 - Hip

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c) Limited Medical Radiography - Spine

- Cervical Spine
- Thoracic Spine
- Lumbar Spine
- Lumbosacral Spine
- Sacroiliac Joints
- Sacrum
- Coccyx

d) Limited Medical Radiography - Skull/Sinuses

- Skull
- Paranasal Sinuses
- Mandible
- Facial bones

(Source: Added at Ill. Reg. _____, effective _____)

401.APPENDIX B Example Topics Directly Related to Radiologic Sciences

As referenced in Section 401.140(b)(5), applicants may refer to this Appendix for subjects relating directly to radiologic sciences in completing the minimum requirements for continuing education.

RADIOGRAPHY	NUCLEAR MEDICINE	RADIATION THERAPY	LIMITED RADIOGRAPHY
Medical Ethics	Medical Ethics	Medical Ethics	Medical Ethics
Medical Terminology	Medical Terminology	Medical Terminology	Medical Terminology
Human Structure & Function	Human Structure & Function	Human Structure & Function	Human Structure & Function
Radiobiology	Radiobiology	Radiobiology	Radiobiology
Radiation Physics	Radiation Physics	Radiation Physics	Radiation Physics
Radiographic Pathology	Radiographic Pathology	Radiographic Pathology	Radiographic Pathology
Principles of Protection	Principles of Protection	Principles of Protection	Principles of Protection
Radiographic Procedures			Radiographic Procedures
Principles of Exposure	Principles of Exposure	Principles of Exposure	Principles of Exposure
Film Processing	Film Processing	Film Processing	Film Processing
Quality Assurance	Quality Assurance	Quality Assurance	Quality Assurance
Imaging Equipment	Imaging Equipment		Imaging Equipment
Introduction to Computer Applications in Radiography	Introduction to Computer Applications in Nuclear Medicine	Introduction to Computer Applications in Radiation Therapy	Introduction to Computer Applications in Radiography

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RADIOGRAPHY	NUCLEAR MEDICINE	RADIATION THERAPY	LIMITED RADIOGRAPHY
Nuclear Physics	Nuclear Physics	Nuclear Physics	Nuclear Physics
Health Physics	Health Physics	Health Physics	Health Physics
	Instrumentation and Statistics		
		Radiation Oncology Technique	
	Biochemistry		
	Immunology		
		Dosimetry	
		Radiation Oncology	
	Radionuclide Therapy		
	Radiochemistry		
	Radionuclide Chemistry		
		Oncology Pathology	

(Source: Added at 111. Reg. _____, effective _____)

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- 1) The Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill. Adm. Code 140
- 3) Section Numbers: Proposed Action:
 140.420 Amendment
 140.421 Amendment
 140. Table D Amendment
- 4) Statutory Authority: Sections 5-5.1 et seq. and 12-13 of the Illinois Public Aid Code (Ill. Rev. Stat. 1989, Ch. 23, Pars. 5-5.1 et seq. and 12-13)
- 5) A Complete Description of the Subjects and Issues Involved: Because of federal interpretation of their own regulations, the Department is changing the manner in which reimbursement is made for certain dental services provided to adults in ICF/MR facilities. Rather than paying dentists directly, the Department will include the cost of such services in affected facilities' rates. The facilities in turn will reimburse dentists for these services. The increase in rates paid nursing facilities as a result of this rulemaking is estimated to increase the Department's aggregate expenditures for facilities by \$500,000.00 in Fiscal Year 1991.
- 6) Will these Proposed Amendments replace Emergency Amendments currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? Yes ☒ No
- 8) Do these Proposed Amendments contain incorporations by reference? No
- 9) Are there any other Proposed Amendments pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
140.16	Amendment	January 18, 1991 (15 Ill. Reg. 406)
140.17	Amendment	November 30, 1990 (14 Ill. Reg. 18982)
140.71	Amendment	December 21, 1990 (14 Ill. Reg. 20170)

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Section Numbers	Proposed Action	Illinois Register Citation
140.413	Amendment	January 11, 1991 (15 Ill. Reg. 406)
140.457	Amendment	December 21, 1990 (14 Ill. Reg. 20170)
140.458	Amendment	December 21, 1990 (14 Ill. Reg. 20170)
140.459	Amendment	December 21, 1990 (14 Ill. Reg. 20170)
140.475	Amendment	January 18, 1991 (15 Ill. Reg. 406)
140.490	Amendment	December 7, 1990 (14 Ill. Reg. 19132)
140.569	Amendment	May 25, 1990 (14 Ill. Reg. 7834)
140.850	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140.855	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140.860	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140.865	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140.870	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140.875	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140.880	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140.885	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140.890	New Section	December 14, 1990 (14 Ill. Reg. 19592)

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Section Numbers	Proposed Action	Illinois Register Citation
140.895	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140. Table K	New Section	December 14, 1990 (14 Ill. Reg. 19592)
140. Table L	New Section	December 14, 1990 (14 Ill. Reg. 19592)

10) Statement of Statewide Policy Objectives: This rulemaking has no effect on local governmental units.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning the proposed rulemaking. All comments must be in writing and should be addressed to Dan Leikvold, Office of the General Counsel, Illinois Department of Public Aid, 100 South Grand Avenue East, Springfield, Illinois 62762 (217/782-1233). The Department will consider all written comments it receives within 30 days of the date of publication of this notice.

Interested parties can review the rules pertaining to this change at the Department of Public Aid's local office located in each county, except in Cook County, where the rules can be reviewed at the Director's Office, 624 South Michigan Avenue, 13th Floor, Chicago, Illinois. The rule can be reviewed at all offices Monday through Friday, 8:30 a.m. until 5:00 p.m..

12) Initial Regulatory Flexibility Analysis:

- A) Date Proposed Amendment was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: January 15, 1991
- B) Types of small businesses affected: Medical Providers
- C) Reporting, bookkeeping or other procedures required for compliance: No new procedures required.
- D) Types of professional skills necessary for compliance: No new skills required.

The full text of the Proposed Amendments begin on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF PUBLIC AID
SUBCHAPTER d: MEDICAL PROGRAMS

PART 140
MEDICAL PAYMENT

SUBPART A: GENERAL PROVISIONS

Section	
140.1	Incorporation By Reference
140.2	Medical Assistance Programs
140.3	Covered Services Under The Medical Assistance Programs for AFDC, AFDC-WANG, AABD, AABD-WANG, RRP, Individuals Under Age 18 Not Eligible for AFDC, Pregnant Women Who Would Be Eligible if the Child Were Born and Pregnant Women and Infants Under Age One Year Who Do Not Qualify As Mandatory Categorically Needy
140.4	Covered Medical Services Under AFDC-WANG for non-pregnant persons who are 18 years of age or older (Repealed)
140.5	Covered Medical Services Under GA and AMI
140.6	Medical Services Not Covered
140.7	Medical Assistance Provided to Individuals Under the Age of Eighteen Who Do Not Qualify for AFDC and Children Under Age Six
140.8	Medical Assistance For Qualified Severely Impaired Individuals
140.9	Medical Assistance for a Pregnant Woman Who Would Not Be Categorically Eligible for AFDC/AFDC-WANG if the Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
140.10	Medical Assistance Provided to Incarcerated Persons
SUBPART B: MEDICAL PROVIDER PARTICIPATION/DRUG MANUAL	
Section	
140.11	Enrollment Conditions for Medical Providers
140.12	Participation Requirements for Medical Providers
140.13	Definitions
140.14	Denial of Application to Participate in the Medical Assistance Program
140.15	Recovery of Money
140.16	Termination of a Vendor's Eligibility to Participate in the Medical Assistance Program
140.17	Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program

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Section	
140.18	Effect of Termination on Individuals Associated with Vendor
140.19	Application to Participate or for Reinstatement Subsequent to Termination, Suspension or Barring Submittal of Claims
140.20	Covered Medicaid Services for Qualified Medicare Beneficiaries (QMBs)
140.21	Magnetic Tape Billings
140.22	Payment of Claims
140.23	Payment Procedures
140.24	Overpayment or Underpayment of Claims
140.25	Payment to Factors Prohibited
140.26	Assignment of Vendor Payments
140.27	Record Requirements for Medical Providers
140.28	Audits
140.30	False Reporting and Other Fraudulent Activities
140.35	Prior Approval for Medical Services or Items
140.40	Prior Approval in Cases of Emergency
140.41	Limitation on Prior Approval
140.42	Post Approval for items or Services When Prior Approval Cannot Be Obtained
140.43	Drug Manual (Recodified)
140.71	Drug Manual (Recodified)
140.72	Drug Manual (Recodified)
140.73	Drug Manual Updates (Recodified)
SUBPART C: HOSPITAL SERVICES	
Section	
140.94	Hospital Services (Recodified)
140.95	Participation (Recodified)
140.96	General Requirements (Recodified)
140.97	Special Requirements (Recodified)
140.98	Covered Hospital Services (Recodified)
140.99	Hospital Services Not Covered (Recodified)
140.100	Limitation On Hospital Services (Recodified)
140.101	Transplants (Recodified)
140.102	Heart Transplants (Recodified)
140.103	Liver Transplants (Recodified)
140.104	Bone Marrow Transplants (Recodified)
140.110	Disproportionate Share Hospital Adjustments (Recodified)
140.116	Payment for Inpatient Services for GA (Recodified)
140.117	Hospital Outpatient and Clinic Services (Recodified)
140.200	Payment for Hospital Services During Fiscal Year 1982 (Recodified)
140.201	Payment for Hospital Services After June 30, 1982 (Repealed)

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Section	
140.202	Payment for Hospital Services During Fiscal Year 1983 (Recodified)
140.203	Limits on Length of Stay by Diagnosis (Recodified)
140.300	Payment for Pre-operative Days and Services Which Can Be Performed in an Outpatient Setting (Recodified)
140.350	Copayments (Recodified)
140.360	Payment Methodology (Recodified)
140.361	Non-Participating Hospitals (Recodified)
140.362	Pre July 1, 1989 Services (Recodified)
140.363	Post June 30, 1989 Services (Recodified)
140.364	Prepayment Review (Recodified)
140.365	Base Year Costs (Recodified)
140.366	Restructuring Adjustment (Recodified)
140.367	Inflation Adjustment (Recodified)
140.368	Volume Adjustment (Repealed)
140.369	Groupings (Recodified)
140.370	Rate Calculation (Recodified)
140.371	Payment (Recodified)
140.372	Review Procedure (Recodified)
140.373	Utilization (Repealed)
140.374	Alternatives (Recodified)
140.375	Exemptions (Recodified)
140.376	Utilization, Case-Mix and Discretionary Funds (Repealed)
140.390	Subacute Alcoholism and Substance Abuse Services (Recodified)
140.391	Definitions (Recodified)
140.392	Types of Subacute Alcoholism and Substance Abuse Services (Recodified)
140.394	Payment for Subacute Alcoholism and Substance Abuse Services (Recodified)
140.396	Rate Appeals for Subacute Alcoholism and Substance Abuse Services (Recodified)
140.398	Hearings (Recodified)
SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES	
Section	
140.400	Payment to Practitioners, Nurses and Laboratories
140.410	Physicians' Services
140.411	Covered Services By Physicians
140.412	Services Not Covered By Physicians
140.413	Limitation on Physician Services
140.414	Requirements for Prescriptions and Dispensing of Pharmacy Items - Physicians
140.416	Optometric Services and Materials

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Section	
140.417	Limitations on Optometric Services
140.418	Department of Corrections Laboratory
140.420	Dental Services
140.421	Limitations on Dental Services
140.422	Requirements for Prescriptions and Dispensing Items of Pharmacy Items - Dentists
140.425	Podiatry Services
140.426	Limitations on Podiatry Services
140.427	Requirement for Prescriptions and Dispensing of Pharmacy Items - Podiatry
140.428	Chiropractic Services
140.429	Limitations on Chiropractic Services (Repealed)
140.430	Independent Laboratory Services
140.431	Services Not Covered by Independent Laboratory
140.432	Limitations on Independent Laboratory Services
140.433	Payment for Laboratory Services
140.434	Record Requirements for Independent Laboratories
140.435	Nurse Services
140.436	Limitations on Nurse Services
140.440	Pharmacy Services
140.441	Pharmacy Services Not Covered
140.442	Prior Approval of Prescriptions
140.443	Filling of Prescriptions
140.444	Compounded Prescriptions
140.445	Prescription Items (Not Compounded)
140.446	Over-the-Counter Items
140.447	Reimbursement
140.448	Returned Pharmacy Items
140.449	Payment of Pharmacy Items
140.450	Record Requirements for Pharmacies
140.452	Mental Health Clinic Services
140.453	Definitions
140.454	Types of Mental Health Clinic Services
140.455	Payment for Mental Health Clinic Services
140.456	Hearings
140.460	Clinic Services
140.461	Clinic Participation Requirements (Emergency Expired)
140.462	Covered Services in Clinics (Emergency Expired)
140.463	Encounter Rate Clinic Payment (Emergency Expired)
140.464	Psychiatric Clinics (Hospital-based)
140.465	Speech and Hearing Clinics
140.466	Rural Health Clinics
140.467	Independent Clinics
140.469	Hospice
140.470	Home Health Services
140.471	Home Health Covered Services
140.472	Types of Home Health Services

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Section
 140.473 Prior Approval for Home Health Services
 140.474 Payment for Home Health Services
 140.475 Medical Equipment, Supplies and Prosthetic Devices
 140.476 Medical Equipment, Supplies and Prosthetic Devices
 for Which Payment Will Not Be Made
 140.477 Limitations on Equipment, Supplies and Prosthetic
 Devices
 140.478 Prior Approval for Medical Equipment, Supplies and
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 140.480 Equipment Rental Limitations
 140.481 Payment for Medical Equipment, Supplies and
 Prosthetic Devices
 140.482 Family Planning Services
 140.483 Limitations on Family Planning Services
 140.484 Payment for Family Planning Services
 140.485 Healthy Kids Program
 140.486 Limitations on Medichex Services (Repealed)
 140.487 Healthy Kids Program Timeliness Standards
 140.488 Periodicity Schedule, Immunizations and Diagnostic
 Laboratory Procedures
 140.490 Medical Transportation
 140.491 Limitations on Medical Transportation
 140.492 Payment for Medical Transportation
 140.495 Psychological Services
 140.496 Payment for Psychological Services
 140.497 Hearing Aids

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Section
 140.500 Group Care Services
 140.502 Cessation of Payment at Federal Direction
 140.503 Cessation of Payment for Improper Level of Care
 140.504 Cessation of Payment Because of Termination of
 Facility
 140.505 Continuation of Payment Because of Threat To Life
 140.506 Provider Voluntary Withdrawal
 140.507 Continuation of Provider Agreement
 140.510 Determination of Need for Group Care
 140.511 Services Provided Without Charge
 140.512 Utilization Control
 140.513 Utilization Review Plan
 140.514 Certifications and Recertifications of Care
 140.515 Management of Recipient Funds--Personal Allowance
 Funds
 140.516 Recipient Management of Funds

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Section
 140.517 Correspondent Management of Funds
 140.518 Facility Management of Funds
 140.519 Use or Accumulation of Funds
 140.520 Management of Recipient Funds--Local Office
 Responsibility
 140.521 Room and Board Accounts
 140.522 Reconciliation of Recipient Funds
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 140.524 Cessation of Payment Due to Loss of License
 140.525 Eligibility For Quality Incentive Program (QUIP)
 140.526 Quality Incentive Standards and Criteria for the
 Quality Incentive Program (QUIP)
 140.527 Quality Incentive Survey
 140.528 Payment of Quality Incentive
 140.529 Reviews
 140.530 Basis of Payment for Group Care Services
 140.531 General Service Costs
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 140.533 General Administration Costs
 140.534 Ownership Costs
 140.535 Costs for Interest, Taxes and Rent
 140.536 Organization and Pre-Operating Costs
 140.537 Payments to Related Organizations
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 140.539 Nurse's Aide Training and Testing
 140.540 Costs Associated With Nursing Home Care Reform Act
 and Implementing Regulations
 140.541 Salaries Paid to Owners or Related Parties
 140.542 Cost Reports-Filing Requirements
 140.543 Time Standards for Filing Cost Reports
 140.544 Access to Cost Reports (Repealed)
 140.545 Penalty for Failure to File Cost Reports
 140.550 Update of Operating Costs
 140.551 General Service Costs
 140.552 Nursing and Program Costs
 140.553 General Administrative Costs
 140.554 Component Inflation Index
 140.555 Minimum Wage
 140.560 Components of the Base Rate Determination
 140.561 Support Costs Components
 140.562 Nursing Costs
 140.563 Capital Costs
 140.565 Incentive Payments for Quality Care (Repealed)
 140.566 Level I Incentive Payments (Repealed)
 140.567 Level II Incentive Payments (Repealed)
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 140.569 Clients With Exceptional Care Needs

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140.570	Capital Rate Component Determination
140.571	Fair Rental Value (FRV) Calculation
140.572	Total Capital Rate
140.573	Other Capital Provisions
140.574	Capital Costs for Rented Facilities
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140.585	Audit and Record Requirements
140.590	Screening Assessment for Long Term Care and
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140.906	Reconsiderations (Recodified)
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140.950	Factors Considered in Awarding ICARE Contracts (Recodified)
140.952	Closing an ICARE Area (Recodified)
140.954	Administrative Review (Recodified)
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Section	Admitting and Clinical Privileges (Recodified)
140.958	Inpatient Hospital Care or Services by
140.960	Non-Contracting Hospitals Eligible for Payment (Recodified)
140.962	Payment to Hospitals for Inpatient Services or Care not Provided under the ICARE Program (Recodified)
140.964	Contract Monitoring (Recodified)
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TABLE H	Areas of Major Life Activity
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AUTHORITY: Implementing Article III of the Illinois Health Finance Reform Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 6503-1 et seq.) and implementing and authorized by Articles III, IV, V, VI, VII and Section 12-13 of the Illinois Public Aid Code (Ill. Rev. Stat. 1989, ch. 23, pars. 3-1 et seq., 4-1 et seq., 5-1 et seq., 6-1 et seq., 7-1 et seq., and 12-13)

SOURCE: Adopted at 3 Ill. Reg. 24, p. 166, effective June 10, 1979; rule repealed and new rule adopted at 6 Ill. Reg. 8374, effective July 6, 1982; emergency amendment at 6 Ill. Reg. 8508, effective July 6, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 681, effective December 30, 1982; amended at 7 Ill. Reg. 7956, effective July 1, 1983; amended at 7 Ill. Reg. 8308, effective July 1, 1983; amended at 7 Ill. Reg. 8271, effective July 5, 1983; emergency amendment at 7 Ill. Reg. 8354, effective July 5, 1983, for a maximum of 150 days; amended at 7 Ill. Reg. 8540, effective July 15, 1983; amended at 7 Ill. Reg. 9382, effective July 22, 1983; amended at 7 Ill. Reg. 12868, effective September 20, 1983; peremptory amendment at 7 Ill. Reg. 15047, effective October 31, 1983; amended at 7 Ill. Reg. 17358, effective December 21, 1983; amended at 8 Ill. Reg. 254, effective December 21, 1983; emergency amendment at 8 Ill. Reg. 580, effective January 1,

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1984, for a maximum of 150 days; recodified at 8 Ill. Reg. 2483; amended at 8 Ill. Reg. 3012, effective February 22, 1984; amended at 8 Ill. Reg. 5262, effective April 9, 1984; amended at 8 Ill. Reg. 6785, effective April 27, 1984; amended at 8 Ill. Reg. 6983, effective May 9, 1984; amended at 8 Ill. Reg. 7258, effective May 16, 1984; emergency amendment at 8 Ill. Reg. 7910, effective May 22, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7910, effective June 1, 1984; amended at 8 Ill. Reg. 10032, effective June 18, 1984; emergency amendment at 8 Ill. Reg. 10062, effective June 20, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 13343, effective July 17, 1984; amended at 8 Ill. Reg. 13779, effective July 24, 1984; Sections 140.72 and 140.73 recodified to 89 Ill. Adm. Code 141 at 8 Ill. Reg. 16354; amended (by adding sections being codified with no substantive change) at 8 Ill. Reg. 17899; peremptory amendment at 8 Ill. Reg. 18151, effective September 18, 1984; amended at 8 Ill. Reg. 21629, effective October 19, 1984; peremptory amendment at 8 Ill. Reg. 21677, effective October 24, 1984; amended at 8 Ill. Reg. 22097, effective October 24, 1984; peremptory amendment at 8 Ill. Reg. 23218, effective October 29, 1984; amended at 8 Ill. Reg. 23218, effective November 20, 1984; emergency amendment at 8 Ill. Reg. 23721, effective November 21, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 25067, effective December 19, 1984; emergency amendment at 9 Ill. Reg. 407, effective January 1, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 2697, effective February 22, 1985; amended at 9 Ill. Reg. 6235, effective April 19, 1985; amended at 9 Ill. Reg. 8677, effective May 28, 1985; amended at 9 Ill. Reg. 9564, effective June 5, 1985; amended at 9 Ill. Reg. 10025, effective June 26, 1985; emergency amendment at 9 Ill. Reg. 11403, effective June 27, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11357, effective June 28, 1985; amended at 9 Ill. Reg. 12000, effective July 24, 1985; amended at 9 Ill. Reg. 12306, effective August 5, 1985; amended at 9 Ill. Reg. 13998, effective September 3, 1985; amended at 9 Ill. Reg. 14684, effective September 13, 1985; amended at 9 Ill. Reg. 15503, effective October 4, 1985; amended at 9 Ill. Reg. 16312, effective October 11, 1985; amended at 9 Ill. Reg. 19138, effective December 2, 1985; amended at 9 Ill. Reg. 19737, effective December 9, 1985; amended at 10 Ill. Reg. 238, effective December 27, 1985; emergency amendment at 10 Ill. Reg. 798, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 672, effective January 6, 1986; amended at 10 Ill. Reg. 1206, effective January 13, 1986; amended at 10 Ill. Reg. 3041, effective January 24, 1986; amended at 10 Ill. Reg. 6981, effective April 16, 1986; amended at 10 Ill. Reg. 7825, effective April 30, 1986; amended at 10 Ill. Reg. 8128,

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effective May 7, 1986; emergency amendment at 10 Ill. Reg. 8912, effective May 13, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 11440, effective June 20, 1986; amended at 10 Ill. Reg. 14714, effective August 27, 1986; amended at 10 Ill. Reg. 15211, effective September 12, 1986; emergency amendment at 10 Ill. Reg. 16729, effective September 18, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 18808, effective October 24, 1986; amended at 10 Ill. Reg. 19742, effective November 12, 1986; amended at 10 Ill. Reg. 21784, effective December 15, 1986; amended at 11 Ill. Reg. 698, effective December 19, 1986; amended at 11 Ill. Reg. 1418, effective December 31, 1986; amended at 11 Ill. Reg. 2323, effective January 16, 1987; amended at 11 Ill. Reg. 4002, effective February 25, 1987; Section 140.71 recodified to 89 Ill. Adm. Code 141 at 11 Ill. Reg. 4302; amended at 11 Ill. Reg. 4303, effective March 6, 1987; amended at 11 Ill. Reg. 7664, effective April 15, 1987; emergency amendment at 11 Ill. Reg. 9342, effective April 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 9169, effective April 28, 1987; amended at 11 Ill. Reg. 10903, effective June 1, 1987; amended at 11 Ill. Reg. 11528, effective June 22, 1987; amended at 11 Ill. Reg. 12011, effective June 30, 1987; amended at 11 Ill. Reg. 12290, effective July 6, 1987; amended at 11 Ill. Reg. 14048, effective August 14, 1987; amended at 11 Ill. Reg. 14771, effective August 25, 1987; amended at 11 Ill. Reg. 16758, effective September 28, 1987; amended at 11 Ill. Reg. 17295, effective September 30, 1987; amended at 11 Ill. Reg. 18696, effective October 27, 1987; amended at 11 Ill. Reg. 20909, effective December 14, 1987; amended at 12 Ill. Reg. 916, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1960, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 5427, effective March 15, 1988; amended at 12 Ill. Reg. 6246, effective March 16, 1988; amended at 12 Ill. Reg. 6728, effective March 22, 1988; Sections 140.900 thru 140.912 and 140.914 and 140.915 Table I recodified to 89 Ill. Adm. Code 147.5 thru 147.205 and 147.206 and 147.207 Table A and 147.208 Table B at 12 Ill. Reg. 6956; amended at 12 Ill. Reg. 6927, effective April 5, 1988; Sections 140.940 thru 140.972 recodified to 89 Ill. Adm. Code 149.5 thru 149.325 at 12 Ill. Reg. 7401; amended at 12 Ill. Reg. 7695, effective April 21, 1988; amended at 12 Ill. Reg. 10497, effective June 3, 1988; amended at 12 Ill. Reg. 10717, effective June 14, 1988; emergency amendment at 12 Ill. Reg. 11868, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12509, effective July 15, 1988; amended at 12 Ill. Reg. 14271, effective August 29, 1988; emergency amendment at 12 Ill. Reg. 16921, effective September 28, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 16738, effective October 5, 1988; amended at 12 Ill. Reg.

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17879, effective October 24, 1988; amended at 12 Ill. Reg. 18198, effective November 4, 1988; amended at 12 Ill. Reg. 19396, effective November 6, 1988; amended at 12 Ill. Reg. 19734, effective November 15, 1988; amended at 13 Ill. Reg. 125, effective January 1, 1989; amended at 13 Ill. Reg. 2475, effective February 14, 1989; amended at 13 Ill. Reg. 3069, effective February 28, 1989; amended at 13 Ill. Reg. 3351, effective March 6, 1989; amended at 13 Ill. Reg. 3917, effective March 17, 1989; amended at 13 Ill. Reg. 5115, effective April 3, 1989; amended at 13 Ill. Reg. 5718, effective April 10, 1989; Sections 140.850 thru 140.896 recodified to 89 Ill. Adm. Code 146.5 thru 146.225 at 13 Ill. Reg. 7040; amended at 13 Ill. Reg. 7025, effective April 24, 1989; amended at 13 Ill. Reg. 7786, effective May 20, 1989; Sections 140.94 thru 140.398 recodified to 89 Ill. Adm. Code 148.10 thru 148.390 at 13 Ill. Reg. 9572; emergency amendment at 13 Ill. Reg. 10977, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 11516, effective July 3, 1989; amended at 13 Ill. Reg. 12119, effective July 7, 1989; Section 140.110 recodified to 89 Ill. Adm. Code 148.120 at 13 Ill. Reg. 12118; amended at 13 Ill. Reg. 12562, effective July 17, 1989; amended at 13 Ill. Reg. 14391, effective August 31, 1989; emergency amendment at 13 Ill. Reg. 15473, effective September 12, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 16992, effective October 16, 1989; amended at 14 Ill. Reg. 190, effective December 21, 1989; amended at 14 Ill. Reg. 2564, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 3241, effective February 14, 1990, for a maximum of 150 days; emergency expired July 14, 1990; amended at 14 Ill. Reg. 4543, effective March 12, 1990; emergency amendment at 14 Ill. Reg. 4577, effective March 6, 1990, for a maximum of 150 days; emergency expired August 3, 1990; emergency amendment at 14 Ill. Reg. 5575, effective April 1, 1990, for a maximum of 150 days; emergency expired August 29, 1990; emergency amendment at 14 Ill. Reg. 5865, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 7141, effective April 27, 1990; emergency amendment at 14 Ill. Reg. 7249, effective April 27, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 10062, effective June 12, 1990; emergency amendment at 14 Ill. Reg. 10409, effective June 19, 1990; emergency amendment at 14 Ill. Reg. 12082, effective July 5, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 13262, effective August 6, 1990; emergency amendment at 14 Ill. Reg. 14184, effective August 16, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 14570, effective August 22, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14826, effective August 31, 1990; amended at 14 Ill. Reg. 15366, effective September 12, 1990; amended at 14 Ill. Reg. 15981,

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effective September 21, 1990; amended at 14 Ill. Reg. 17279, effective October 12, 1990; amended at 14 Ill. Reg. 18057, effective October 22, 1990; amended at 14 Ill. Reg. 18508, effective October 30, 1990; amended at 14 Ill. Reg. 18813, effective November 6, 1990; amended at 14 Ill. Reg. 20478, effective December 7, 1990; amended at 14 Ill. Reg. 20729, effective December 12, 1990; amended at 15 Ill. Reg. 298, effective December 28, 1990; emergency amendment at 15 Ill. Reg. 592, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 1051, effective January 18, 1991; amended at 15 Ill. Reg. _____, effective _____.

NOTE: CAPITALIZATION DENOTES STATUTORY LANGUAGE.

SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

Section 140.420 Dental Services

- a) Payment for dental services shall be made only to licensed dentists. Payment for comprehensive orthodontic care shall be made only to a dentist licensed for provision of such services.
- b) Except for the "services not covered" specified below, payment shall be made for dental services that are:
 - 1) Necessary to relieve pain or infection. preserve teeth, or restore adequate dental function.
 - 2) Diagnostic, preventive, or restorative services, endodontics, prosthodontics, orthodontics or oral surgery included in the Department's Schedule of Dental Procedures (see Table D at the end of this Part);
 - 3) Performed by the dentist or under the direct supervision of the dentist.
- c) Services for which payment shall not be made include:
 - 1) Routine or periodic examination other than:
 - A) Initial examinations;
 - B) Required school examinations;
 - C) Periodic examinations for children with minimum of 12 months having elapsed since

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Section 140.420 Dental Services (Cont'd.)

- initial or previous periodic examination;
- 2) Partial dentures, bridges, pontics for adults (persons over age 20);
- 3) Orthodontics, posterior endodontics, apexification (a procedure to close an open end of a root) and periodontics for adults;
- 4) Experimental dental care;
- 5) Procedures performed only for cosmetic reasons;
- 6) Acrylic crown;
- 7) Fluoride for adults;
- 8) Space maintainers for adults;
- 9) Alveoloplasty (surgical preparation of gum ridge for dentures) and frenulectomy (cutting through soft tissue impeding tongue movement) for adults.

(Source: Amended at 15 Ill. Reg. _____, effective _____)

Section 140.421 Limitations on Dental Services

- a) Prior approval is required for:
 - 1) Space maintainers (will not be approved if an adult as defined in Section 140.420);
 - 2) Crowns;
 - 3) Endodontics;
 - 4) Periodontics;
 - 5) Dentures;
 - 6) Bridgework;
 - 7) Orthodontics (to be approved, the procedure must be to treat a severe handicapping malocclusion or a handicapping dento-facial deformity);

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Section 140.421 Limitations on Dental Services (Cont'd.)

SUBPART H: ILLINOIS COMPETITIVE ACCESS AND REIMBURSEMENT EQUITY (ICARE) PROGRAM

- 8) Extraction of impacted teeth;
- 9) Alveoloplasty (will not be approved if an adult as defined in Section 140.420);
- 10) Cyst excisions;
- 11) Frenulectomy (will not be approved if an adult as defined in Section 140.420);
- 12) Analgesia (nitrous oxide);
- 13) Dental services not included in the Department's Schedule of Dental Procedures (See Table D at the end of this Part).
- b) The dentist may request post-approval when a dental procedure requiring prior approval is provided on an emergency basis. Approval of the procedures shall be given if, in the judgment of a consulting dentist of the Department or a consulting dental service, the procedure is necessary to prevent dental disease or to restore and maintain adequate dental function to assure good bodily health and the well-being of the patient.
- c) Payment for complete and partial dentures is limited to one set every three years; payment for a bridge is limited to once in five years. Bridgework will be reimbursed only if there has not been placement of a partial denture within the prior three years.
- d) Root canals, apexification, and apicoectomy procedures are covered for children for anterior teeth, bicuspsids, and permanent first molars. Root canals are covered for adults only for anterior teeth.
- e) Periodontal treatment is covered for children and for these adults who reside in ICARE facilities.
- f) Full-mouth series of x-rays are covered only once every three years.

Section 140.421 Table D Schedule of Dental Procedures

a) Diagnostic

1) Clinical Oral Examinations

- A) Initial oral examination
- B) Periodic oral examination for individuals through age 20 (minimum of 12 months required since most recent dental examination)
- C) School examination as required by Illinois School Code (Section 1-1 et seq. of The School Code, Ill. Rev. Stat. 1987-1989, ch. 122, par. 1-1 et seq.)

2) Radiographs

- A) Intraoral--complete series (including bitewings)
- B) Intraoral periapical--single, first film
- C) Intraoral periapical--one additional film
- D) Intraoral periapical--two additional films
- E) Intraoral periapical--three additional films
- F) Intraoral periapical--four additional films
- G) Intraoral periapical--five additional films
- H) Intraoral periapical--six additional films
- I) Intraoral periapical--seven additional films
- J) Intraoral periapical--eight or more additional films
- K) Bitewing--single film
- L) Bitewings--two films

(Source: Amended at 15 Ill. Reg. _____, effective _____)

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

- M) Bitewings--three films
- N) Bitewings--four films
- O) Panoramic--maxilla and mandible, film
- P) Panoramic--one tooth treated
- Q) Panoramic--two teeth treated
- R) Panoramic--three teeth treated
- S) Panoramic--four teeth treated
- T) Panoramic--five teeth treated
- U) Panoramic with bitewings (and anterior periapicals as needed)

b) Preventive

1) Dental Prophylaxis

Children (beginning at age 2 through age 20)
Adults (applicable only to those adults who reside in ICF/DD facilities)

2) Fluoride Treatments

Topical application of acid fluoride phosphate--one treatment (excluding prophylaxis) (beginning at age 2 through age 20)

3) Space Management Therapy (use of appliances to maintain space for tooth eruption)

- A) Fixed--unilateral type
- B) Fixed--bilateral type
- C) Removable bilateral type
- D) Recementation of space maintainer

c) Restorative

1) Amalgam Restorations (including polishing)

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

- A) Amalgam--one surface, deciduous
- B) Amalgam--two surfaces (separate fillings), deciduous
- C) Amalgam--three surfaces (separate fillings), deciduous
- D) Amalgam--four surfaces (separate fillings), deciduous
- E) Amalgam--five surfaces (separate fillings), deciduous
- F) Amalgam--one two-surface filling, deciduous
- G) Amalgam--two two-surface fillings, deciduous
- H) Amalgam--one three-surface filling, deciduous
- I) Amalgam--one four-surface filling, deciduous
- J) Amalgam--one surface, permanent
- K) Amalgam--two surfaces (separate fillings), permanent
- L) Amalgam--three surfaces (separate fillings), permanent
- M) Amalgam--four surfaces (separate fillings), permanent
- N) Amalgam--five surfaces (separate fillings), permanent
- O) Amalgam--one two-surface filling, permanent
- P) Amalgam--two two-surface fillings, permanent
- Q) Amalgam--one three-surface filling, permanent
- R) Amalgam--one four or more-surface filling, permanent
- S) Pin retention--exclusive of amalgam

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

- 2) Acrylic or Plastic Restorations
- A) Composite resin--one surface
 - B) Composite resin--two surfaces (separate fillings)
 - C) Composite resin--three surfaces (separate fillings)
 - D) Composite resin--four surfaces (separate fillings)
 - E) Composite resin--five surfaces (separate fillings)
 - F) Composite resin--one two-surface filling
 - G) Composite resin--two two-surface fillings
 - H) Composite resin--one three or more-surface filling
 - I) Composite resin (involving incisal angle)
 - J) Pin retention--exclusive of composite resin
- 3) Crowns--Single Restorations Only
- A) Plastic--prefabricated
 - B) Prefabricated stainless steel--primary
 - C) Prefabricated stainless steel--permanent
 - D) Prefabricated post and core in addition to crown
- 4) Other Restorative Services
- A) Recement inlays
 - B) Recement crowns
 - C) Fillings (sedative)

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

d) Endodontics

- 1) Pulpotomy (excluding final restoration) Vital pulpotomy (including bases and x-rays)
 - 2) Root Canal Therapy (includes treatment plan, treatment x-rays, clinical procedures and follow-up care; excludes final restoration)
 - A) One Canal -- traditional technique
 - B) One Canal -- Sargenti technique
 - C) Two Canals -- traditional technique
 - D) Two Canals -- Sargenti technique
 - E) Three Canals -- First Permanent Molar -- traditional technique
 - F) Three Canals -- First Permanent Molar -- Sargenti technique
 - G) Apexification
 - 3) Periapical Services
 - Apicoectomy--performed as separate surgical procedure (per root)
- e) Periodontics
- Periodontal Treatment (applicable only to children and to those adults who reside in ICF/DD facilities. requires submission of prescribed course of treatment and usual and customary charge)
- f) Prosthodontics, Removable
- 1) Complete Dentures--including six months' post delivery care
 - A) Complete upper
 - B) Complete lower

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

- 2)

Partial Dentures--including six months' post delivery care

A)

Upper--without clasps, acrylic base

B)

Lower--without clasps, acrylic base

C)

Upper--with two chrome clasps with rests, acrylic base

D)

Lower--with chrome clasps with rests, acrylic base

E)

Lower--with chrome lingual bar & two clasps, acrylic base

F)

Upper--with chrome palatal bar & two clasps, acrylic base

3)

Non-Delivered Dentures

A)

Non-delivery, Full Denture

B)

Non-delivery, Claspless Partial Denture

C)

Non-delivery, Partial Denture, Two Clasps

D)

Non-delivery, Partial Denture, Two Clasps and Lingual or Palatal Bar

4)

Repairs to Dentures

A)

Repair broken complete or partial denture--no teeth damaged

B)

Repair broken complete or partial denture--replace one broken tooth

C)

Replace additional teeth--each tooth

D)

Replace broken tooth on denture--no other repairs

E)

Adding tooth to partial denture to replace extracted tooth--each tooth (not involving clasp or abutment tooth)
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Section 140. Table D Schedule of Dental Procedures (Cont'd.)
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Section 140. Table D Schedule of Dental Procedures (Cont'd.)
- 5)

Denture Relining

A)

Relining upper complete denture (laboratory)

B)

Relining lower complete denture (laboratory)

C)

Relining upper partial denture (laboratory)

D)

Relining lower partial denture (laboratory)

g)

Prosthodontics, Fixed

1)

Bridge Pontics

A)

Porcelain fused to nonprecious metal

B)

Plastic processed to nonprecious metal

2)

Crowns

A)

Resin with predominantly base metal

B)

Porcelain fused to metal

3)

Other Prosthetic Services

A)

Recement bridge

B)

Dowel pin--metal

h)

Oral Surgery

1)

Extractions

A)

Single tooth

B)

Each additional tooth

2)

Surgical Extractions

A)

Surgical removal of erupted tooth, requires elevation of mucoperiosteal flap and removal of bone and/or section of tooth

B)

Extraction, soft tissue impaction

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

- C) Extraction, partial bone impaction
- D) Extraction, complete bone impaction
- E) Root recovery (surgical removal of residual root)
- 3) Other Surgical Procedures
 - Surgical exposure of impacted or unerupted tooth to aid eruption
- 4) Alveoloplasty (surgical preparation of ridge for dentures)
 - A) One quadrant
 - B) Two quadrants
 - C) Three quadrants
 - D) Four quadrants
- 5) Removal of Cysts and Neoplasms
 - A) Removal of odontogenic cyst or tumor--up to 1.25 cm in diameter
 - B) Removal of odontogenic cyst or tumor--over 1.25 cm in diameter
 - C) Removal of nonodontogenic cyst or tumor--up to 1.25 cm in diameter
 - D) Removal of nonodontogenic cyst or tumor--over 1.25 cm in diameter
- 6) Treatment of Fractures--simple
 - A) Maxilla--open reduction, teeth immobilized (if present)
 - B) Maxilla--closed reduction, teeth immobilized (if present)

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

- C) Mandible--open reduction, teeth immobilized (if present)
- D) Mandible--closed reduction, teeth immobilized (if present)
- 7) Treatment of Fractures--compound
 - A) Maxilla--open reduction
 - B) Maxilla--closed reduction
 - C) Mandible--open reduction
 - D) Mandible--closed reduction
- 8) Reduction of Dislocation
 - A) Open reduction of dislocation
 - B) Closed reduction of dislocation
- 9) Other Oral Surgery
 - Frenulectomy--separate procedure (frenectomy or frenotomy)
 - i) Orthodontics
 - Comprehensive Orthodontic Treatment
 - 1) Initial examination, records, radiographs, study models and facial photographs
 - 2) Initial orthodontic appliance
 - 3) Each month of treatment
 - 4) Initial orthodontic evaluation (describe extent of evaluation)
 - j) Adjunctive General Services
 - 1) Unclassified Treatment
 - Palliative (emergency) treatment of dental pain, minor procedures

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Section 140. Table D Schedule of Dental Procedures (Cont'd.)

- 2) Anesthesia
 - A) General
 - B) Analgesia
 - C) Intravenous sedation
- 3) Professional Consultation--(diagnostic service provided by dentist other than practitioner providing treatment)
 - Consultation
- 4) Drugs
 - A) Therapeutic drug injection
 - B) Other drugs and/or medicaments
- 5) Miscellaneous Services
 - Unspecified (by report to be described by statement of attending dentist)

(Source: Amended at 15 Ill. Reg. _____, effective _____)

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- 1) Heading of Part: Carriage by Public Highway

- 2) Code Citation: 92 Ill. Adm. Code 177

- 3) Section Numbers: Proposed Action:

177.2000 Amendment

- 4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 700-4(a) and 700-9(a)

- 5) A complete description of the subjects and issues involved:
By this Notice of Proposed Amendment, the Department proposes to delete the date of incorporation by reference of 49 CFR 177 as of September 1, 1989, and insert in its place the date of October 1, 1990.

A review of the federal regulations adopted since September 1, 1989, to the proposed date of incorporation by reference, indicates there are certain changes made by US DOT not reflected in the Department's regulations. This rulemaking does make limited changes in the Department's regulations to bring Part 177 in line with the federal regulations. The following is a summary of the changes in US DOT regulations which are included in this proposed rulemaking.

By proposing this rulemaking, the Department's regulations will incorporate the changes made to Part 177 by US DOT in rulemaking Dockets:

HM-164C [54 FR 41902 (October 12, 1989)]
[55 FR 19210 (May 8, 1990)]

HM-164D [55 FR 4423 (February 8, 1990)]

HM-183/183A [54 FR 50332 (December 6, 1989)]

[55 FR 21035 (May 22, 1990)]

[55 FR 37028 (September 7, 1990)]

HM-189I [55 FR 39977 (October 1, 1990)]

Docket HM-164C amended the regulations to require carriers of highway route controlled quantity radioactive materials to transport those materials directly from pick up points to preferred routes to delivery points using a shortest distance criterion. Section 177.825 was revised so that motor carriers of highway route controlled quantity radioactive materials would, with some exceptions, have to transport those materials directly from pick up points to

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preferred routes and directly from preferred routes to delivery points using a shortest distance criterion."

Docket HM-164D amended the regulations by deleting Appendix A from Part 177 which was a policy statement providing guidance to state and local governments regarding routing, shipping and control of radioactive materials.

Docket HM-183/183A amended the regulations by revising the effective date and the requirements for the manufacture of cargo tanks and the operation, maintenance, repair and qualification of all specification cargo tanks. Section 177.824 was revised to clarify that a motor carrier may not operate a specification cargo tank motor vehicle containing a hazardous material unless the cargo tank conforms to the retest and inspection requirements in the regulations.

Docket HM-189I amended the regulations by correcting editorial errors and making minor regulatory changes to the regulations. Section 177.870 corrected the word "paranitroaniline".

6) Will this proposed rulemaking replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference?

Yes. These conform to Section 6.02(a) of the Illinois Administrative Procedure Act.

9) Are there any other amendments pending on this part? No

10) Statement of Statewide Policy Objectives: Rules do not affect units of local government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Any interested party may submit written comments or arguments concerning this proposed rule. Written submissions shall be filed with:

DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED AMENDMENTS

Mr. Tom Crawford, Manager
Regulations and Training Unit
Department of Transportation
Division of Traffic Safety
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-3064

Comments received within thirty days of the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to D.C.C.A.: January 18, 1991
- B) Types of small businesses affected: Those businesses that offer for shipments or carry hazardous materials by highway.
- C) Reporting, bookkeeping or other procedures required for compliance: No new or additional reporting requirements are required for compliance with this Part.
- D) Types of professional skills necessary for compliance: No new or additional professional skills are required for compliance with this Part.

The full text of this Proposed Rule begins on the next page:

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NOTICE OF PROPOSED AMENDMENT(S)

TITLE 92: TRANSPORTATION
 CHAPTER 1: DEPARTMENT OF TRANSPORTATION
 SUBCHAPTER C: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 177

CARRIAGE BY PUBLIC HIGHWAY

Section
 177.1000 General
 177.2000 Incorporation By Reference of 49 CFR 177

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act (Ill. Rev. Stat. 1987, ch. 95 1/2, pars. 700-4(a) and 700-9(a)).

SOURCE: Adopted at 3 Ill. Reg. 5, P. Al, effective February 1, 1979; amended at 4 Ill. Reg. 30, P. 1244, effective July 10, 1980; amended at 6 Ill. Reg. 4287, effective April 16, 1982; amended at 7 Ill. Reg. 3486, effective April 2, 1983; codified at 8 Ill. Reg. 18930; Part repealed, new Part adopted at 10 Ill. Reg. 5853, effective April 1, 1986; amended at 10 Ill. Reg. 20749, effective December 1, 1986; amended at 11 Ill. Reg. 4768, effective March 10, 1987; amended at 11 Ill. Reg. 17881, effective October 20, 1987; amended at 12 Ill. Reg. 8074, effective April 26, 1988; amended at 13 Ill. Reg. 3957, effective March 14, 1989; amended at 14 Ill. Reg. 2613, effective February 1, 1990; amended at ____ Ill. Reg. _____, effective _____.

Section 177.2000 Incorporation By Reference of 49 CFR 177

- a) As Part 177 of the Illinois Hazardous Materials Transportation Regulations the Department incorporates 49 CFR 177 by reference, as that part of the federal hazardous materials transportation regulations was in effect on September 17, 1989. October 1, 1990, subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 177 are incorporated.
- b) The following interpretations of, additions to and deletions from 49 CFR 177 shall apply for purposes of this part 177 of the Illinois Hazardous Materials Transportation Regulations.
 - 1) All references to "this part" in the incorporated federal regulations shall mean part 177 of the Illinois Hazardous Materials Transportation Regulations.
 - 2) All references to "this chapter" or "this subchapter" in

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the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter C.

- 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.
- 4) All references to Parts 174, 175 or 176, or to sections therein shall be read to refer to those Parts or sections in the federal hazardous materials transportation regulations.
- 5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.
- 6) All references to motor vehicles engaged in interstate commerce shall be deemed to include any motor vehicle engaged in commerce within the State of Illinois.
- 7) Section 177.804 in 49 CFR is deleted and not incorporated.

(Source: Amended at ____ Ill. Reg. _____, effective _____.)

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1) Heading of Part: Continuing Qualification and Maintenance of Packaging

2) Code Citation: 92 Ill. Adm. Code 180

3) Section Numbers: Proposed Action:

180.2000

Amendment

4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 700-4(a) and 700-9(a)

5) A complete description of the subjects and issues involved: By this Notice of Proposed Amendment, the Department proposes to delete the date of incorporation by reference of 49 CFR 180 as of September 1, 1989, and insert in its place the date of October 1, 1990.

A review of the federal regulations adopted since September 1, 1989, to the proposed date of incorporation by reference, indicates there are certain changes made by US DOT not reflected in the Department's regulations. This rulemaking does make limited changes in the Department's regulations to bring Part 180 in line with the federal regulations. The following is a summary of the changes in US DOT regulations which are included in this proposed rulemaking.

By proposing this rulemaking, the Department's regulations will incorporate changes made to Part 180 by US DOT in rulemaking Dockets:

HM-183/183A [54 FR 50332 (December 6, 1989)]
[55 FR 21035 (May 22, 1990)]
[55 FR 37028 (September 7, 1990)]

Docket HM-183/183A amended the regulations by revising the effective date and the requirements for the manufacture of cargo tanks and the operation, maintenance, repair, and qualification of all specifications cargo tanks. A definition for "corrosive to the tank/valve" was added, and the definitions for "modification" and "repair" were revised. Section 180.405 was revised to be consistent with changes made to the regulations. The section heading in section 180.407 was revised and paragraphs to clarify the testing and inspection requirements that apply to specification cargo tanks were added. Section 180.409 was revised to clarify the requirements for inspectors and

testers. Requirements for repair, modification, stretching or rebarrelling of cargo tanks were revised in section 180.413. Section 180.415 was revised to clarify marking requirements on the cargo tank shell. Reporting and record retention requirements were revised in section 180.417.

6) Will this proposed rulemaking replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference?

Yes. These conform to Section 6.02(a) of the Illinois Administrative Procedure Act.

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: Rules do not affect units of local government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Any interested party may submit written comments or arguments concerning this proposed rule. Written submissions shall be filed with:

Mr. Tom Crawford, Manager
Regulations and Training Unit
Department of Transportation
Division of Traffic Safety
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-3064

Comments received within thirty days of the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to D.C.C.A.: January 18, 1991

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- B) Types of small businesses affected: Those businesses that offer for shipments or carry hazardous materials by highway.
- C) Reporting, bookkeeping or other procedures required for compliance: No new or additional reporting requirements are required for compliance with this Part.
- D) Types of professional skills necessary for compliance: No new or additional professional skills are required for compliance with this Part.

The full text of this Proposed Rule begins on the next page:

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NOTICE OF PROPOSED AMENDMENT(S)

TITLE 92: TRANSPORTATION
 CHAPTER I: DEPARTMENT OF TRANSPORTATION
 SUBCHAPTER C: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 180
 CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGING

Section
 180.1000 General
 180.2000 Incorporation by Reference of 49 CFR 180

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act (Ill. Rev. Stat. 198789, ch. 95 1/2, pars. 700-4(a) and 700-9(a)).

SOURCE: Adopted at 14 Ill. Reg. 2617, effective February 1, 1990; amended at ____ Ill. Reg. _____, effective _____.

Section 180.2000 Incorporation by Reference of 49 CFR 180

- a) As Part 180 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 180 by reference, as that Part of the federal hazardous material transportation regulations was in effect on September-17-1989 October 1, 1990, subject only to the exceptions in paragraph subsection (b) of this Section. No later amendments to or editions of 49 CFR 180 are incorporated.
- b) The following interpretations of, additions to and deletions from 49 CFR 180 shall apply for purposes of this Part 180 of the Illinois Hazardous Materials Transportation Regulations.
- 1) All references to "this part" in the incorporated federal regulations shall mean Part 180 of the Illinois Hazardous Materials Transportation Regulations.
 - 2) All references to "this chapter" or "this Subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter C.
 - 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

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- 1) Heading of Part: General Information, Regulations, and Definitions
- 2) Code Citation: 92 Ill. Adm. Code 171
- 3) Section Numbers:
171.6 Amendment
171.1000 Amendment
- 4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 700-4(a) and 700-9(a)

5) A complete description of the subjects and issues involved:

By this Notice of Proposed Amendments, the Department proposes to delete the date of incorporation by reference of certain sections of 49 CFR 171 as of September 1, 1989, and insert in its place the date of October 1, 1990. In section 171.6, the Department is proposing to revise the amounts and packaging configurations of agricultural chemicals that are included in the Department's agricultural exception. US DOT's rulemaking Docket HM-166W, September 20, 1989, revises section 173.5(a)(2) by increasing the capacity of inside packagings for liquid agricultural chemicals from 1 gallon to 2 1/2 gallons when offered for transportation in less-than-case-lot quantities. This provision will provide relief for the agricultural user. The Department is amending section 171.6, as well as Part 173, because regulations relating to the agricultural industry are stated in section 171.6. For a description of how Docket HM-166W affects Part 173, please refer to the Notice of Proposed Rules for Part 173 found elsewhere in this issue of the Illinois Register. The Department is also amending section 171.6 to note the reference to Part 397 of the Motor Carrier Safety Regulations required because of the restructuring of those regulations.

A review of the federal regulations adopted since September 1, 1989, to the proposed date of incorporation by reference, indicates there are certain changes made by US DOT not reflected in the Department's regulations. This rulemaking does have the effect of making limited substantive changes in the Department's regulations to bring Part 171 in line with the federal regulations. The following is a summary of the changes in US DOT regulations which are included in this proposed rulemaking.

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- 4) All references to Parts 174, 175, 176, or to sections therein shall be read to refer to those parts or sections in the federal hazardous material transportation regulations.
- 5) All references to shipments of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.

(Source: Amended at Ill. Reg. _____, effective _____)

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By proposing this rulemaking, the Department's regulations will incorporate changes made to Part 171 by US DOT in rulemaking Dockets:

- HM-166W [54 FR 38790 (September 20, 1989)]
 [54 FR 47986 (November 20, 1989)]
 HM-189H [54 FR 40066 (September 29, 1989)]
 HM-183/183A [54 FR 50332 (December 6, 1989)]
 [55 FR 21035 (May 22, 1990)]
 [55 FR 37028 (September 7, 1990)]
 HM-126C [55 FR 870 (January 10, 1990)]
 [55 FR 20796 (May 21, 1990)]
 [55 FR 33707 (August 17, 1990)]
 HM-189I [55 FR 99977 (October 1, 1990)]

Docket HM-166W amended the regulations to incorporate various changes initiated by industry and US DOT to eliminate the need for certain DOT approvals, to reduce a backlog of rulemaking petitions and to update and clarify existing regulations. The address for the Bureau of Explosives, Association of American Railroads and the Fertilizer Institute was included in section 171.7. The Association of American Railroads Specification for Tank Cars and the International Maritime Dangerous Goods Code were updated to the latest 1988 edition. Other revisions included revising the title for a Bureau of Explosives publication and adding a reference to the Fertilizer Institutes publication, "Definition and Test Procedures for Ammonium Nitrate Fertilizer".

Docket HM-189H amended the regulations to incorporate various changes to promote accuracy of the regulations. Editorial corrections to cite the correct section numbers were made in sections 171.3 and 171.8.

Docket HM-183/183A amended the regulations by revising the effective date and the requirements for the manufacture of cargo tanks and the operation, maintenance, repair and qualification of all specification cargo tanks. The definitions of "cargo tank", "design certifying engineer" and "registered inspector" were revised in section 171.8.

Docket HM-126C amended the regulations by revising the effective date and the requirements for emergency response information on shipping papers and placement of emergency response information for vehicles at transportation

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facilities handling hazardous materials shipments. The definition for "technical name" was revised in section 171.8.

Docket HM-189I amended the regulations by correcting editorial errors and making minor regulatory changes to the regulations. A zip code was revised in sections 171.7(b), 171.16(b), 171.16 Note and 171.20(b).

6) Will this proposed rulemaking replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? Yes. These conform to Section 6.02(a) of the Illinois Administrative Procedure Act.

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: Rules do not affect units of local government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Any interested party may submit written comments or arguments concerning this proposed rule. Written submissions shall be filed with:

Mr. Tom Crawford, Manager
 Regulations and Training Unit
 Department of Transportation
 Division of Traffic Safety
 2300 South Dirksen Parkway
 Springfield, Illinois 62764
 (217) 785-3064

Comments received within thirty days of the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to D.C.C.A.: January 18, 1991

B) Types of small businesses affected: Those businesses

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that offer for shipments or carry hazardous materials by highway.

- C) Reporting, bookkeeping or other procedures required for compliance: No new or additional reporting requirements are required for compliance with this Part.
- D) Types of professional skills necessary for compliance: No new or additional professional skills are required for compliance with this Part.

The full text of this Proposed Rule begins on the next page:

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NOTICE OF PROPOSED AMENDMENT(S)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER C: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 171

GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

Section

171.1 Purpose and Scope

171.2 General Transportation Requirements

171.3 Hazardous Waste

171.4 Exemptions

171.6 Agricultural Exception

171.7 Matter Incorporated by Reference (Repealed)

171.8 Definitions and Abbreviations (Repealed)

171.9 Rules of Construction (Repealed)

171.12 Import and Export Shipments (Repealed)

171.14 Specification Markings (Repealed)

171.15 Notification and Reporting of Hazardous Materials Incidents

171.17 Hazardous Substance Discharge Notification

171.18 Continuation of Effectiveness of Existing Bureau of Explosives

Registrations (Repealed)

171.19 Approvals or Authorizations Issued by the Bureau of Explosives

(Repealed)

171.21 Retailer Exception

171.1000 Incorporation by Reference of 49 CFR 171

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act (Ill. Rev. Stat. 1987, ch. 95 1/2, pars. 700-4(a) and 700-9(a)).

SOURCE: Adopted at 3 Ill. Reg. 5, p. 41, effective February 1, 1979; amended at 6 Ill. Reg. 4287, effective April 16, 1982; amended at 7 Ill. Reg. 3486, effective April 2, 1983; codified at 8 Ill. Reg. 17984; amended at 10 Ill. Reg. 9636, effective May 15, 1986; amended at 10 Ill. Reg. 20753, effective December 1, 1986; emergency amendment at 11 Ill. Reg. 1684, effective January 16, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 4772, effective March 10, 1987; amended at 11 Ill. Reg. 7767, effective April 14, 1987; amended at 11 Ill. Reg. 17886, effective October 20, 1987; amended at 12 Ill. Reg. 8078, effective April 26, 1988; amended at 13 Ill. Reg. 3984, effective March 14, 1989; amended at 14 Ill. Reg. 2621, effective February 1, 1990; amended at _____ Ill. Reg. _____, effective _____.

Section 171.6 Agricultural Exception

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These regulations and Driving and Parking; 92 Ill. Adm. Code 397 do not apply to the transportation of those hazardous materials cited below when such commodities are transported from retailer to final agricultural end user, or between final end users from farm to farm in approved containers and in the amounts and manner specified:

- a) Agricultural pesticides classified as Class B Poison or Flammable by these regulations, when moved in quantities of 5,000 pounds or less (aggregate gross weight) or 500 gallons or less volume in solution;
- b) Gasoline, diesel fuels, oils, lubricants, and liquefied petroleum gas, when moved in quantities of 3,000 gallons or less and properly placarded in accordance with 92 Ill. Adm. Code 172.504(a).
- c) Ammonium nitrate fertilizer, when moved in quantities of 16,000 pounds (aggregate gross weight) or less.
- d) Anhydrous ammonia when transported in a cargo tank (commonly known as a nurse tank and considered an implement of husbandry) operated by private carriers exclusively for agricultural purposes, provided the cargo tank:

- 1) Has a minimum design pressure of 250 per square inch (p.s.i.) and meets the requirements of the ASME code in effect at time of manufacture and is marked accordingly;
- 2) Is equipped with safety relief valves meeting the requirements of CGA Pamphlet S1.2;
- 3) Is painted white or aluminum;
- 4) Has a capacity of 175002,000 gallons or less;
- 5) Is loaded to a filling density of 56 percent of water density (85 percent of volume capacity);
- 6) ~~Is drawn as a loaded, single-unit trailer at speeds not to exceed 25 m.p.h., and is appropriately marked with a slow moving vehicle sign, except that two empty trailers carrying tanks containing less than 25 percent of each tank's volume capacity, may be pulled in tandem;~~
- 7) ~~is operated on a public highway only during daylight hours;~~

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- 9) ~~is moving anhydrous ammonia from retail to final agricultural end user or between final end users from farm to farm;~~

- 9) ~~is marked on each side and on the rear of the container with the words "Caution--Ammonia" on a background of sharply contrasting colors in letters at least 4 inches high or in lieu of the foregoing markings is placarded on each side and each end with non-flammable gas placards meeting the requirements of 92 Ill. Adm. Code 172.529;~~

- 6) Is securely mounted on a farm wagon; and

- 7) Is in conformance with the requirements of 92 Ill. Adm. Code Part 172; except that shipping papers are not required; and it need not be marked or placarded on one end if that end contains valves, fittings, regulators, gauges, or other appurtenances that prevent the marking and placard from being properly placed and visible.

- e) Formulated agricultural chemicals not listed in subsection a or c above which are offered for transportation in less-than-case-lot quantities, or when repackaged, are not subject to 92 Ill. Adm. Code 172, Subpart D and the outside specification packaging requirements of Part 173 of this subchapter if all of the following conditions are met:

- 1) Inside packagings are enclosed in strong outside packagings. Inside liquid packagings are cushioned, if necessary, to prevent breakage and leakage;
- 2) Each inside packaging does not exceed 2 1/2-gallons capacity for liquids or 25 pounds for dry materials;
- 3) Gross weight of less-than-case or repackaged lots is not over 100 pounds in each vehicle;
- 4) Transportation is authorized only by private motor vehicle between a final distribution point and the ultimate point of application, if that distance does not exceed one hundred miles.

- f) Formulated liquid agricultural chemicals in specification packagings of 55 gallons capacity, or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices may be transported by a private motor

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carrier between a final distribution point and an ultimate point of application or loading aboard on aircraft for aerial application.

Section 171.1000 Incorporation by Reference of 49 CFR 171

- a) As Part 171 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates the following sections of 49 CFR 171 by reference, as those sections of the federal hazardous materials transportation regulations were in effect on ~~September 1, 1990~~ October 1, 1990, subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of those sections of 49 CFR 171 of the federal regulations are incorporated.

171.7 Matter Incorporated by Reference
 171.8 Definitions and Abbreviations
 171.9 Rules of Construction
 171.11 Use of ICAO Technical Instructions
 171.12 Import and Export Shipments
 171.12a Canadian Shipments and Packagings
 171.14 Specification Markings
 171.18 Continuation of Effectiveness of Existing Bureau of Explosives
 171.19 Approvals or Authorizations Issued by the Bureau of Explosives
 171.20 Submission of Examination Reports

- b) The following interpretations of, additions to and deletions from the above incorporated sections of 49 CFR 171 shall apply for purposes of this Part 171 of the Illinois Hazardous Materials Transportation Regulations.

- 1) All references to "this part" in the incorporated federal regulations shall mean Part 171 of the Illinois Hazardous Materials Transportation Regulations.
- 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter C.
- 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

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- 4) All references to Part 176 or to sections therein shall be read to refer to that part or sections in the federal regulations.
- 5) All references to shipments of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.
- 6) All references to "these regulations" refers to the Illinois Hazardous Materials Transportation Regulations, 92 Ill. Adm. Code 102-179180 and 397.
- 7) All references to a "settlement agreement", in these regulations, means a written understanding between the Department and the person being charged.
- 8) The following paragraphs to Section 171.7 "Matter incorporated by reference" in 49 CFR are deleted and not incorporated: 171.7(d)(2); 171.7(d)(21).
- 9) Provisions of Section 171.12a, as it appears to affect Emergency Response Information in Docket HM-126 [54 FR 27138, (June 27, 1989)], can be done now; but the enforcement date does not become effective until April 2, 1990.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

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existing regulations. The Hazardous Materials Table was amended in section 172.101 by removing, adding and revising information. Some general placarding requirements were revised in section 172.504(c).

1) Heading of Part: Hazardous Materials Table and Hazardous Materials Communications

2) Code Citation: 92 Ill. Adm. Code 172

3) Section Numbers: 172.2000
Proposed Action: Amendment

4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 700-4(a) and 700-9(a)

5) A complete description of the subjects and issues involved: By this Notice of Proposed Amendment, the Department proposes to delete the date of incorporation by reference of 49 CFR 172 as of September 1, 1989, and insert in its place the date of October 1, 1990.

A review of the federal regulations adopted since September 1, 1989, indicates there are certain changes made by US DOT which should be reflected in the Department's regulations. This rulemaking will make limited substantive changes in the Department's regulations to bring Part 172 in line with the federal regulations. The following is a summary of the changes in US DOT regulations which are included in this proposed rulemaking.

By proposing this rulemaking, the Department's regulations will incorporate changes made to Part 172 by US DOT in rulemaking Dockets:

- HM-166W [54 FR 38790 (September 20, 1989)]
- HM-145H [54 FR 39500 (September 26, 1989)]
- HM-189H [54 FR 40066 (September 29, 1989)]
- [54 FR 41447 (October 10, 1989)]
- [54 FR 51031 (December 12, 1989)]
- HM-189I [55 FR 99977 (October 1, 1990)]
- HM-126C [55 FR 871 (January 10, 1990)]
- [55 FR 20796 (May 21, 1990)]
- [55 FR 33707 (August 17, 1990)]

Docket HM-166W amended the regulations to incorporate various changes initiated by industry and US DOT to eliminate the need for certain DOT approvals, to reduce a backlog of rulemaking petitions, and to update and clarify

Docket HM-145H amended the regulations by revising the "List of Hazardous Substances and Reportable Quantities". Section 172.101 appendix was amended to update the hazardous substance and reportable quantity list.

Docket HM-189H amended the regulations to incorporate editorial corrections and clarifications and made minor regulatory changes which do not impose any new requirements on persons subject to the regulations. Several inaccurate entries and references in the Hazardous Material Table were corrected in section 172.101.

Docket HM-189I amended the regulations by correcting editorial errors and making minor regulatory changes to the regulations. Editorial corrections to provide clarity and consistency to the regulations were made in the following sections: section 172.101, the Hazardous Material Table, language on bulk packaging containing a hazardous material in section 172.221, spelling for the EXPLOSIVE A placard in section 172.510, and the word "residue" was inserted in section 172.525.

Docket HM-126C amended the regulations by revising the effective date and requirements for emergency response information on shipping papers and placement of emergency response information on vehicles at transportation facilities handling hazardous material shipments. The requirements for shipments of hazardous materials being transported into the US from Canada was inserted in section 172.12 to be in compliance with the emergency response information required in the regulations.

6) Will this proposed rulemaking replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference?

Yes. These conform to Section 6.02(a) of the Illinois

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Administrative Procedure Act.

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: Rules do not affect units of local government.

11) Time, place, and manner in which interested persons may comment on this proposed rulemaking: Any interested party may submit written comments or arguments concerning this proposed rule. Written submissions shall be filed with:

Mr. Tom Crawford
Regulations and Training Unit
Department of Transportation
Division of Traffic Safety
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-3064

Comments received within thirty days of the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to D.C.C.A.: January 18, 1991
- B) Types of small businesses affected: Those businesses that offer for shipments or carry hazardous materials by highway.
- C) Reporting, bookkeeping or other procedures required for compliance: No new or additional reporting requirements are required for compliance with this Part.
- D) Types of professional skills necessary for compliance: No new or additional professional skills are required for compliance with this Part.

The full text of this Proposed Rule begins on the next page:

TITLE 92: TRANSPORTATION

CHAPTER I: DEPARTMENT OF TRANSPORTATION

SUBCHAPTER C: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 172

HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS

Section

General

172.1000 Incorporation by Reference of 49 CFR 172

172.2000 Permanent Shipping Papers

172.2215

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act (Ill. Rev. Stat. 198789, ch. 95 1/2, pars. 700-4(a) and 700-9(a)).

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 6 Ill. Reg. 4287, 4487 and 4573, effective April 16, 1982; amended at 7 Ill. Reg. 3486, effective April 2, 1983; amended at 8 Ill. Reg. 19640, effective October 1, 1984; codified at 8 Ill. Reg. 19601; amended at 8 Ill. Reg. 19622, effective October 1, 1984; emergency amendment at 8 Ill. Reg. 22889, effective November 9, 1984, for a maximum of 150 days; amended at 9 Ill. Reg. 3810, effective March 11, 1985; Part repealed, new Part adopted at 10 Ill. Reg. 5864, effective April 1, 1986; amended at 10 Ill. Reg. 20759, effective December 1, 1986; emergency amendment at 11 Ill. Reg. 1690, effective January 16, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 4777, effective March 10, 1987; amended at 11 Ill. Reg. 7773, effective April 14, 1987; amended at 11 Ill. Reg. 17893, effective October 20, 1987; amended at 12 Ill. Reg. 8084, effective April 26, 1988; amended at 13 Ill. Reg. 3993, effective March 14, 1989; amended at 14 Ill. Reg. 2628, effective February 1, 1990; amended at _____ Ill. Reg. _____, effective _____.

Section 172.2000 Incorporation by Reference of 49 CFR 172

- a) As Part 172 of the Illinois Hazardous Materials Transportation Regulations the Department incorporates 49 CFR 172 by reference, as that part of the federal hazardous material transportation regulations was in effect on September 1, 1989 October 1, 1990, subject only to the exceptions in subsection (b) of this Section and Section 172.2215. No later amendments to or editions of 49 CFR 172 are incorporated.

- b) The following interpretations of, additions to and deletions from 49 CFR 172 shall apply for purposes of this Part 172 of

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the Illinois Hazardous Materials Transportation Regulations.

- 1) All references to "this part" in the incorporated federal regulations shall mean Part 172 of the Illinois Hazardous Materials Transportation Regulations.
- 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.
- 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that section in the Illinois Hazardous Materials Transportation Regulations.
- 4) All references to Parts 174, 175 or 176, or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.
- 5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.
- 6) Any changes to 49 CFR 172 made effective by U.S. DOT Rulemaking Docket HM-187 [49 FR 21933 (May 24, 1984)] covering small arms ammunition are not incorporated.

(Source: Amended at ___ Ill. Reg. ___, effective _____)

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- 1) Heading of Part: Shippers General Requirements for Shipments and Packagings
- 2) Code Citation: 92 Ill. Adm. Code 173
- 3) Section Numbers:
173.3000
Proposed Action:
Amendment
- 4) Statutory Authority: Ill. Rev. Stat. ch. 95 1/2, pars. 700-4(a) and 700-9(a)
- 5) A complete description of the subjects and issues involved:
By this Notice of Proposed Amendment, the Department proposes to delete the date of incorporation by reference of 49 CFR 173 as of September 1, 1989, and insert in its place the date of October 1, 1990. Also, the Department is proposing to delete Section 173.3000(b)(6), thereby incorporating by reference 49 CFR 173.5. The Department is proposing to revise the amounts and packagings configurations of agriculture chemicals to bring the Department's regulations in line with the federal regulations. Subsequent sections are renumbered to reflect this change.

A review of the federal regulations adopted since September 1, 1989, to the proposed date of incorporation by reference, indicates that there are certain changes made by US DOT not reflected in the Department's regulations. This rulemaking does have the effect of making limited substantive changes in the Department's regulations to bring Part 173 in line with the federal regulations. The following is a summary of the changes in US DOT regulations which are included in this proposed rulemaking.

By proposing this rulemaking, the Department's regulations will incorporate changes made to Part 173 by US DOT in rulemaking Dockets:

HM-166W [54 FR 38790 (September 20, 1990)]
HM-126C [55 FR 870 (January 10, 1990)]
[55 FR 20796 (May 21, 1990)]
[55 FR 33707 (August 17, 1990)]
HM-189I [55 FR 39977 (October 1, 1990)]

Docket HM-166W amended the regulations to incorporate

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various changes initiated by industry and US DOT to eliminate the need for certain DOT approvals, to reduce a backlog of rulemaking petitions, and to update and clarify existing regulations.

The capacity of inside packagings for agricultural chemicals was increased in section 173.5(c)(2). The introductory text to authorized packages and overpacks was revised in section 173.25. Section 173.31(a)(7) was removed, and sections 173.31(a)(5) and (a)(6) were revised. Sections 173.31(c)(14) and (d)(10) were added to permit shipment of certain tank car tanks after expiration of the retest date. Information on cylinder specifications was revised in section 173.34. Section 173.115 was revised to permit reclassification of certain alcohol solutions to combustible liquids. Language was revised in section 173.118. A footnote was revised in section 173.182. Information was revised, added and changed in sections 173.249(a), 173.250, 173.262, 173.264, 173.301, 173.304, 173.314, 173.315 and 173.417.

Docket HM-126C amended the regulations by revising the effective date and requirements for emergency response information on shipping papers and placement of emergency response information on vehicles at transportation facilities handling hazardous materials shipments. Section 173.4 corrected a reference to section 172.203 which was omitted in the June 27, 1989 final rule.

Docket HM-189I amended the regulations by correcting editorial errors and making minor regulatory changes to the regulations. The following sections made editorial corrections to provide clarity and consistency to the regulations, section 173.12 was revised to read "and oleum (fuming sulfuric acid)" for clarity. Section 173.217 added the description "trichloroisocyanuric acid". Section 173.247 added the word "tank". Section 173.252 was revised to use the correct word "conform".

- 6) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? Yes. These conform to Section 6.02(a) of the

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Illinois Administrative Procedure Act.

- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: Rules do not affect units of local government.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Any interested party may submit written comments or arguments concerning this proposed rule. Written submissions shall be filed with:

Mr. Tom Crawford, Manager
Regulations and Training Unit
Department of Transportation
Division of Traffic Safety
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-3064

Comments received within thirty days of the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to D.C.C.A.: January 18, 1991
- B) Types of small businesses affected: Those businesses that offer for shipments or carry hazardous materials by highway.
- C) Reporting, bookkeeping or other procedures required for compliance: No new or additional reporting requirements are required for compliance with this part.
- D) Types of professional skills necessary for compliance: No new or additional professional skills are required for compliance with this Part.

The full text of this Proposed Rule begins on the next page:

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2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter C.

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SUBCHAPTER C: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

PART 173
SHIPPER GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4) All references to Parts 174, 175 or 176 or to sections therein shall be read to refer to those Parts or sections in the federal hazardous materials transportation regulations.

Section 173.2000 General
173.3000 Incorporation by Reference of 49 CFR 173
AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act (Ill. Rev. Stat. 1987, ch. 95 1/2, pars. 700-4(a) and 700-9(a)).

5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 4 Ill. Reg. 30, p. 1244, effective July 10, 1980; amended at 5 Ill. Reg. 1715, effective February 9, 1981; amended at 6 Ill. Reg. 4287, effective April 16, 1982; amended at 6 Ill. Reg. 10036, effective August 2, 1982; amended at 7 Ill. Reg. 3486, effective April 12, 1983; codified at 8 Ill. Reg. 20915; Part repealed, new Part adopted at 10 Ill. Reg. 5885, effective April 1, 1986; amended at 10 Ill. Reg. 20764, effective December 1, 1986; amended at 11 Ill. Reg. 4781, effective March 10, 1987; amended at 11 Ill. Reg. 17898, effective October 20, 1987; amended at 12 Ill. Reg. 8089, effective April 26, 1988; amended at 13 Ill. Reg. 3998, effective March 14, 1989; amended at 14 Ill. Reg. 2651, effective February 1, 1990; amended at 15 Ill. Reg. _____, effective _____.

6) ~~Section 173.5-in-43-CFR-is-deleted-and-not-incorporated.~~
Section 173.24(c)(1)(vi) is added to the Illinois Hazardous Materials Transportation Regulations and reads as follows:

Section 173.3000 Incorporation by Reference of 49 CFR 173
a) As Part 173 of the Illinois Hazardous Materials Transportation Regulations the Department incorporates 49 CFR 173 by reference, as that Part of the federal hazardous materials transportation regulations was in effect on September 17-1989 October 1, 1990, subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 173 are incorporated.

The markings in this section are not required for a surface moisture/density gauge transported as Radioactive Materials, Special Form, N.O.S., when accompanied by a shipping paper which contains (or is accompanied by) a signed statement or certification from the manufacturer of the gauge attesting that the gauge construction complies with all package specifications set forth in Section 173.415 and 173.416, except those that pertain to marking.

7) Section 173.119(n) is added to the Illinois Hazardous Materials Transportation Regulations and reads as follows:

b) The following interpretations of, additions to and deletions from 49 CFR 173 shall apply for purposes of this Part 173 of the Illinois Hazardous Materials Transportation Regulations.
1) All references to "this part" in the incorporated federal regulations shall mean part 173 of the Illinois Hazardous Materials Transportation Regulations.

The specifications in this Section do not apply to gasoline being transported in a packaging having a rated capacity of 110 gallons or less if the shipment is in compliance with the rules of the Office of the State Fire Marshal, 41 Ill. Adm. Code 170.15(c). In addition, these shipments are not subject to Subchapter C of these regulations except for those Sections referenced in 41 Ill. Adm. Code 170.15(c).

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- 1) Heading of Part: Shipping Container Specifications
- 2) Code Citation: 92 Ill. Adm. Code 178
- 3) Section Numbers: 178.2000
Proposed Action: Amendment
- 4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 700-4(a) and 700-9(a)

5) A complete description of the subjects and issues involved:
By this Notice of Proposed Amendment, the Department proposes to delete the date of incorporation by reference of 49 CFR 178 as of September 1, 1989, and insert in its place the date of October 1, 1990.

A review of the federal regulations adopted since September 1, 1989, to the proposed date of incorporation by reference, indicates there are certain changes made by US DOT not reflected in the Department's regulations. This rulemaking does make limited changes in the Department's regulations to bring Part 178 in line with the federal regulations. The following is a summary of the changes in US DOT regulations which are included in this proposed rulemaking.

By proposing this rulemaking, the Department's regulations will incorporate changes made to Part 178 by US DOT in rulemaking Dockets:

HM-166W [54 FR 38790 (September 20, 1989)]
[54 FR 47986 (November 20, 1989)]
HM-189H [54 FR 40066 (September 29, 1989)]
[54 FR 51031 (December 12, 1989)]
HM-189I [55 FR 99977 (October 1, 1990)]
HM-183/183A [54 FR 50332 (December 6, 1989)]
[55 FR 21035 (May 22, 1990)]
[55 FR 37028 (September 7, 1990)]

Docket HM-166W amended the regulations to incorporate various changes initiated by industry and US DOT to eliminate the need for certain DOT approvals, to reduce a backlog of rulemaking petitions, and to update and clarify existing regulations. Section 178.39-5 was revised to clarify the intent of the regulations. Section 178.224

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- 89) Section 173.315(a)(1) Note 17 is deleted from the federal regulations and a new Section 173.315(a)(1) Note 17 is added to the Illinois Regulations to read as follows:

Specifications MC 330 and MC 331 cargo tanks, with a design service pressure of 250 p.s.i.g., built in compliance with the Federal ICC or Federal DOT regulations at the time of manufacture, which meet all other design and testing requirements specified by Section 177.824 for cargo tanks in anhydrous ammonia service, and which have been in anhydrous ammonia service in Illinois before February 1, 1979, may continue to be used in such service. No cargo tank that has not been in anhydrous ammonia service in Illinois before February 1, 1979, may be placed in such service in Illinois after that date unless it meets all requirements of the specification, including a minimum design service pressure of 265 p.s.i.g.

- 94) Section 173.315(k) in 49 CFR is deleted and not incorporated.

- 104) Any changes to 49 CFR 173 made effective by U.S. DOT Rulemaking Docket HM-187 [49 FR 21933 (May 24, 1984)] covering small arms ammunition are not incorporated.

(Source: Amended at ___ Ill. Reg. ___, effective ___)

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increased the capacity of DOT-21C fiber drums from 55 gallons to 75 gallons for drums having a net weight between 115 and 250 pounds. Section 178.251-7 was amended to allow additional test date to be marked on tanks when necessary.

Docket HM-189H amended the regulations to incorporate various changes to promote accuracy of the regulations. A comma was removed and a semicolon added in Section 178.51-15. A correction to a table entry was made in Section 178.115-3. A symbol was corrected in Section 178.210-12. Section 178.224-2 made an editorial correction.

Docket HM-189I amended the regulations by correcting editorial errors and making minor regulatory changes to the regulations. Sections 178.16-19, 178.17-6, 178.45-17 and 178.65-14 were updated to show a change in zip code for the U.S. Department of Transportation.

Docket HM-183/183A amended the regulations by revising the effective date and the requirements for the manufacture of cargo tanks and the operation, maintenance, repair, and qualification of all specifications cargo tanks. The definitions of "cargo tank", "cargo tank motor vehicle", and "cargo tank wall" were added to section 178.320. Section 178.337-3 and 178.338-3 were revised for clarity. The leakage testing requirements were revised in Section 178.337-9. Section 178.338-3 was revised to clarify functions of inspectors and design engineers. Requirements for equipment specifications, structural support, definitions, and general requirements were revised in other sections.

6) Will this proposed rulemaking replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? Yes. These conform to Section 6.02(a) of the Illinois Administrative Procedure Act.

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: Rules do not affect units of local government.

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11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Any interested party may submit written comments or arguments concerning this proposed rule. Written submissions shall be filed with:

Mr. Tom Crawford, Manager
Regulations and Training Unit
Department of Transportation
Division of Traffic Safety
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-3064

Comments received within thirty days of the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to D.C.C.A.: January 18, 1991
- B) Types of small businesses affected: Those businesses that offer for shipments or carry hazardous materials by highway.
- C) Reporting, bookkeeping or other procedures required for compliance: No new or additional reporting requirements are required for compliance with this Part.
- D) Types of professional skills necessary for compliance: No new or additional professional skills are required for compliance with this Part.

The full text of this Proposed Rule begins on the next page:

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PART 178
SHIPPING CONTAINER SPECIFICATIONS

Section
178.321
Specification MC 300; Cargo Tanks Constructed of Mild (Open
Heath or Blue Annealed) Steel, or Combination of Mild
Steel with High Tensile Steel, or Stainless Steel,
Primarily for the Transportation of Flammable Liquids or
Poisonous Liquids, Class B

- 178.321.0.1 [178.321-1] General Requirements
178.321.0.2 [178.321-2] Material
178.321.0.3 [178.321-3] Thickness
178.321.0.4 [178.321-4] Joints
178.321.0.5 [178.321-5] Bulkheads, Baffles, and Ring Stiffeners
178.321.0.6 [178.321-6] Closures for Manholes
178.321.0.7 [178.321-7] Overturn Protection
178.321.0.8 [178.321-8] Outlets
178.321.0.9 [178.321-9] Vents, Valves, and Connections
178.321.1.0 [178.321-10] Protection of Fittings
178.321.1.1 [178.321-11] Emergency Discharge Control
178.321.1.2 [178.321-12] Shear Section
178.321.1.3 [178.321-13] Anchoring of Tank
178.321.1.4 [178.321-14] Gauging Devices
178.321.1.5 [178.321-15] Pumps
178.321.1.6 [178.321-16] Testing Requirements
178.321.1.7 [178.321-17] Marking of Cargo Tanks
178.321.1.8 [178.321-18] Certification
178.322
Specification MC 301; Cargo Tanks Constructed of Welded
Aluminum Alloy (Grade 3S), To Be Mounted On and To Form
Part of Tank Motor Vehicles for Transportation of Flammable
Liquids, and Poisonous Liquids, Class B
178.322.0.1 [178.322-1] General Requirements
178.322.0.3 [178.322-3] Certification
178.322.0.5 [178.322-5] Marking of Cargo Tanks
178.322.0.9 [178.322-9] Testing Requirements
178.322.1.1 [178.322-11] Material
178.322.1.2 [178.322-12] Thickness of Sheets and Ring Stiffeners
178.322.1.3 [178.322-13] Tolerance
178.322.1.4 [178.322-14] Joints
178.322.1.7 [178.322-17] Tank Outlets

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- 178.322.1.8 [178.322-18] Bulkheads, Baffles, and Ring Stiffeners
178.322.1.9 [178.322-19] Tank Vents
178.322.2.0 [178.322-20] Valve and Faucet Connections
178.322.2.1 [178.322-21] Emergency Discharge Control
178.322.2.2 [178.322-22] Shear Section
178.322.2.3 [178.322-23] Protection of Valves and Faucets
178.322.2.4 [178.322-24] Overturn Protection
178.323
Specification MC 302; Cargo Tanks Constructed of Welded
Aluminum Alloy (ASTM B209-57T), Primarily for the
Transportation of Flammable Liquids, or Poisonous Liquids,
Class B
178.323.0.1 [178.323-1] General Requirements
178.323.0.2 [178.323-2] Material
178.323.0.3 [178.323-3] Thickness of Metal
178.323.0.4 [178.323-4] Joints
178.323.0.5 [178.323-5] Bulkheads, Baffles, and Ring Stiffeners
178.323.0.6 [178.323-6] Closures for Manholes
178.323.0.7 [178.323-7] Overturn Protection
178.323.0.8 [178.323-8] Tank Outlets
178.323.0.9 [178.323-9] Vents, Valves, and Connections
178.323.1.0 [178.323-10] Protection of Fittings
178.323.1.1 [178.323-11] Emergency Discharge Control
178.323.1.2 [178.323-12] Shear Section
178.323.1.3 [178.323-13] Anchoring of Tank
178.323.1.4 [178.323-14] Gauging Devices
178.323.1.5 [178.323-15] Pumps
178.323.1.6 [178.323-16] Testing Requirements
178.323.1.7 [178.323-17] Marking of Cargo Tanks
178.323.1.8 [178.323-18] Certification
178.324
Specification MC 303; Cargo Tanks Constructed of Welded
Ferrous Alloy (High-Tensile Steel), or Stainless Steel,
Primarily for the Transportation of Flammable Liquids, or
Poisonous Liquids, Class B
178.324.0.1 [178.324-1] General Requirements
178.324.0.2 [178.324-2] Material
178.324.0.3 [178.324-3] Thickness of Metal
178.324.0.4 [178.324-4] Joints
178.324.0.5 [178.324-5] Bulkheads, Baffles, and Ring Stiffeners
178.324.0.6 [178.324-6] Closures for Manholes
178.324.0.7 [178.324-7] Overturn Protection
178.324.0.8 [178.324-8] Outlets
178.324.0.9 [178.324-9] Vents, Valves, and Connections
178.324.1.0 [178.324-10] Protection of Fittings
178.324.1.1 [178.324-11] Emergency Discharge Control
178.324.1.2 [178.324-12] Shear Section
178.324.1.3 [178.324-13] Anchoring of Tank

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- 178.324.1.4 Gauging Devices
 178.324.1.5 Pumps
 178.324.1.6 Testing Requirements
 178.324.1.7 Marking of Cargo Tanks
 178.324.1.8 Certification
 178.325 Specification MC 304; Cargo Tanks Constructed of Mild (Open Hearth or Blue Annealed) Steel, Welded Ferrous Alloy (High-Tensile) Steel, or Aluminum, Primarily For the Transportation of Flammable Liquids, or Poisonous Liquids, Class B, Having Reid (ASTM D-323) Vapor Pressures of 18 PSIA or More at 100 degrees F., But Less Than Those Stated in 92 Ill. Adm. Code 173.300, in Defining Compressed Gases
 178.325.1.1 General Requirements
 178.325.2.1 Material
 178.325.3.1 Thickness of Metal
 178.325.4.1 Joints
 178.325.5.1 Bulkheads, Baffles, and Ring Stiffeners
 178.325.6.1 Closures for Manholes
 178.325.7.1 Overturn Protection
 178.325.8.1 Tank Outlets
 178.325.9.1 Safety Relief Devices, Valves, and Connections
 178.325.10.1 Protection of Fittings
 178.325.11.1 Emergency Discharge Control
 178.325.12.1 Shear Section
 178.325.13.1 Anchoring of Cargo Tank
 178.325.14.1 Gauging Devices
 178.325.15.1 Pumps
 178.325.16.1 Testing Requirements
 178.325.17.1 Marking of Cargo Tanks
 178.325.18.1 Certification
 178.326 Specification MC 305; Cargo Tanks Constructed of Aluminum Alloys for High-Strength Welded Construction, Primarily For the Transportation of Flammable Liquids, or Poisonous Liquids, Class B
 178.326.1.1 General Requirements
 178.326.2.1 Material
 178.326.3.1 Thickness of Sheets
 178.326.4.1 Joints
 178.326.5.1 Bulkheads, Baffles, and Ring Stiffeners
 178.326.6.1 Closures for Manholes
 178.326.7.1 Overturn Protection
 178.326.8.1 Tank Outlets
 178.326.9.1 Vents, Valves, and Connections
 178.326.10.1 Protection of Fittings
 178.326.11.1 Emergency Discharge Control
 178.326.12.1 Shear Section

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- 178.326.1.3 Anchoring of Cargo Tank
 178.326.1.4 Gauging Devices
 178.326.1.5 Pumps
 178.326.1.6 Testing Requirements
 178.326.1.7 Marking of Cargo Tanks
 178.326.1.8 Certification
 178.330 Specification MC 310; Cargo Tanks Constructed of Ferrous Materials, Primarily For the Transportation of Corrosive Liquids
 178.330.1.1 General Requirements
 178.330.2.1 Material
 178.330.3.1 Thickness of Metal
 178.330.4.1 Joints
 178.330.5.1 Bulkheads, Baffles, and Ring Stiffeners, Tank Supports, and Compartmentation
 178.330.6.1 Closures for Manholes
 178.330.7.1 Overturn Protection
 178.330.8.1 Outlets
 178.330.9.1 Vents, Valves, and Connections
 178.330.10.1 Protection of Fittings
 178.330.11.1 Emergency Discharge Control
 178.330.12.1 Shear Section
 178.330.13.1 Anchoring of Cargo Tank
 178.330.14.1 Gauging Devices
 178.330.15.1 Pumps and Compressors
 178.330.16.1 Testing Requirements
 178.330.17.1 Marking of Cargo Tanks
 178.330.18.1 Certification
 178.331 Specification MC 311; Cargo Tanks Constructed of Ferrous Metals or Aluminum, Primarily for the Transportation of Corrosive Liquids
 178.331.1.1 General Requirements
 178.331.2.1 Material
 178.331.3.1 Thickness of Metal
 178.331.4.1 Joints
 178.331.5.1 Bulkheads, Baffles, and Ring Stiffeners, Tank Supports, and Compartmentation
 178.331.6.1 Closures for Manholes
 178.331.7.1 Overturn Protection
 178.331.8.1 Outlets
 178.331.9.1 Vents, Valves, and Connections
 178.331.10.1 Protection of Fittings
 178.331.11.1 Emergency Discharge Control
 178.331.12.1 Shear Section
 178.331.13.1 Anchoring of Cargo Tank
 178.331.14.1 Gauging Devices

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178.331.1.5 [178.331-15] Pumps and Compressors
 178.331.1.6 [178.331-16] Testing Requirements
 178.331.1.7 [178.331-17] Marking of Cargo Tanks
 178.331.1.8 [178.331-18] Certification
 178.336 Specification MC 330; Cargo Tanks Constructed of Steel, Primarily for Transportation of Compressed Gases
 178.336.0.1 [178.336-1] General Requirements
 178.336.0.2 [178.336-2] Material
 178.336.0.3 [178.336-3] Thickness of Metal
 178.336.0.4 [178.336-4] Joints
 178.336.0.5 [178.336-5] Bulkheads, Baffles, and Ring Stiffeners
 178.336.0.6 [178.336-6] Closures for Manholes
 178.336.0.7 [178.336-7] Overtank Protection
 178.336.0.8 [178.336-8] Outlets
 178.336.0.9 [178.336-9] Safety Relief Devices, Valves, and Connections
 178.336.1.0 [178.336-10] Protection of Fittings
 178.336.1.1 [178.336-11] Emergency Discharge Control
 178.336.1.2 [178.336-12] Shear Section
 178.336.1.3 [178.336-13] Anchoring of Cargo Tank
 178.336.1.4 [178.336-14] Gauging Devices
 178.336.1.5 [178.336-15] Pumps and Compressors
 178.336.1.6 [178.336-16] Testing Requirements
 178.336.1.7 [178.336-17] Marking of Cargo Tanks
 178.336.1.8 [178.336-18] Certification
 178.337 Specification MC 331; Cargo Tanks Constructed of Steel, Primarily for Transportation of Compressed Gases, As Defined in the Compressed Gas Section (Repealed)
 178.337.0.1 [178.337-1] General Requirements (Repealed)
 178.337.0.2 [178.337-2] Material (Repealed)
 178.337.0.3 [178.337-3] Thickness of Tank Metal (Repealed)
 178.337.0.4 [178.337-4] Joints (Repealed)
 178.337.0.5 [178.337-5] Bulkheads, Baffles, and Ring Stiffeners (Repealed)
 178.337.0.6 [178.337-6] Closures for Manholes (Repealed)
 178.337.0.7 [178.337-7] Overtank Protection (Repealed)
 178.337.0.8 [178.337-8] Outlets (Repealed)
 178.337.0.9 [178.337-9] Safety Relief Devices, Valves, and Connections (Repealed)
 178.337.1.0 [178.337-10] Protection of Fittings (Repealed)
 178.337.1.1 [178.337-11] Emergency Discharge Control (Repealed)
 178.337.1.2 [178.337-12] Shear Section (Repealed)
 178.337.1.3 [178.337-13] Supporting and Anchoring (Repealed)
 178.337.1.4 [178.337-14] Gauging Devices (Repealed)
 178.337.1.5 [178.337-15] Pumps and Compressors (Repealed)
 178.337.1.6 [178.337-16] Testing (Repealed)
 178.337.1.7 [178.337-17] Marking (Repealed)

178.337.1.8 [178.337-18] Certification (Repealed)
 178.340 General Design and Construction Requirements Applicable to Specification MC 306 (Section 178.341), MC 307 (Section 178.342), and MC 312 (Section 178.343) Cargo Tanks (Repealed)
 178.340.0.1 [178.340-1] Specification Requirements for MC 306, MC 307, and MC 312 Cargo Tanks (Repealed)
 178.340.0.2 [178.340-2] General Requirements (Repealed)
 178.340.0.3 [178.340-3] Material (Repealed)
 178.340.0.4 [178.340-4] Structural Integrity (Repealed)
 178.340.0.5 [178.340-5] Joints (Repealed)
 178.340.0.6 [178.340-6] Supports and Anchoring (Repealed)
 178.340.0.7 [178.340-7] Circumferential Reinforcements (Repealed)
 178.340.0.8 [178.340-8] Accident Damage Protection (Repealed)
 178.340.0.9 [178.340-9] Pumps (Repealed)
 178.340.1.0 [178.340-10] Certification (Repealed)
 178.341 Specification MC 306; Cargo Tanks (Repealed)
 178.341.0.1 [178.341-1] General Requirements (Repealed)
 178.341.0.2 [178.341-2] Thickness of Shells, Heads, Bulkheads, and Baffles (Repealed)
 178.341.0.3 [178.341-3] Closures for Fill Openings and Manholes (Repealed)
 178.341.0.4 [178.341-4] Vents (Repealed)
 178.341.0.5 [178.341-5] Emergency Flow Control (Repealed)
 178.341.0.6 [178.341-6] Gauging Devices (Repealed)
 178.341.0.7 [178.341-7] Method of Test (Repealed)
 178.342 Specification MC 307; Cargo Tanks (Repealed)
 178.342.0.1 [178.342-1] General Requirements (Repealed)
 178.342.0.2 [178.342-2] Thickness of Shells, Heads, Bulkheads, and Baffles (Repealed)
 178.342.0.3 [178.342-3] Closures for Fill Openings and Manholes (Repealed)
 178.342.0.4 [178.342-4] Vents (Repealed)
 178.342.0.5 [178.342-5] Emergency Flow Control (Repealed)
 178.342.0.6 [178.342-6] Gauging Devices (Repealed)
 178.342.0.7 [178.342-7] Method of Test (Repealed)
 178.343 Specification MC 312; Cargo Tanks (Repealed)
 178.343.0.1 [178.343-1] General Requirements (Repealed)
 178.343.0.2 [178.343-2] Thickness of Shell, Heads, Bulkheads, and Baffles of Non-Asme Code Tanks (Repealed)
 178.343.0.3 [178.343-3] Closures for Manholes (Repealed)
 178.343.0.4 [178.343-4] Vents (Repealed)
 178.343.0.5 [178.343-5] Outlets (Repealed)
 178.343.0.6 [178.343-6] Gauging Devices (Repealed)
 178.343.0.7 [178.343-7] Method of Test (Repealed)
 178.350 Specification 7A; General Packaging, Type A (Repealed)

[178.350-1] General Requirements (Repealed)

[178.350-2] Specific Requirements (Repealed)

[178.35-3] Marking (Repealed)

General

Incorporation by Reference of 49 CFR 178

Tensile Specimen

Material Thickness (Repealed)

Minimum Thickness of Heads, Bulkheads, and Baffles (Repealed)

Minimum Thickness of Shell Sheets (Repealed)

APPENDIX C

APPENDIX D

TABLE A

TABLE B

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act (Ill. Rev. Stat. 1967, ch. 95 1/2, pars. 700-4(a) and 700-9(a)).

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 5 Ill. Reg. 1715, effective February 9, 1981; amended at 6 Ill. Reg. 10036, effective August 2, 1982; amended at 8 Ill. Reg. 19640, effective October 1, 1984; codified at 8 Ill. Reg. 20047; amended at 8 Ill. Reg. 20064, effective October 1, 1984; amended at 10 Ill. Reg. 5897, effective April 1, 1986; amended at 10 Ill. Reg. 20770, effective December 1, 1986; amended at 11 Ill. Reg. 4786, effective March 10, 1987; amended at 11 Ill. Reg. 17904, effective October 20, 1987; amended at 12 Ill. Reg. 3093, effective April 26, 1988; amended at 13 Ill. Reg. 4004, effective March 14, 1989; amended at 14 Ill. Reg. 2640, effective February 1, 1990; amended at Ill. Reg. , effective

AGENCY NOTE: In reading this Part it is necessary to read Sections 178.1000 and 179.2000 prior to reading the remaining Section in numerical order.

Section 178.2000 Incorporation By Reference of 49 CFR 178

a) As Part 178 of the Illinois Hazardous Materials Transportation Regulations the Department incorporates 49 CFR 178 by reference, as that part of the federal hazardous materials transportation regulations was in effect on September 1, 1990, subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 178 are incorporated.

b) The following interpretations of, additions to and deletions from the 49 CFR 178 shall apply for purposes of this part 178 of the Illinois Hazardous Materials Transportation Regulations.

1) All references to "this part" in the incorporated federal

DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULES

- 1) Heading of Part: Specification for Tank Cars
- 2) Code Citation: 92 Ill. Adm. Code 179
- 3) Section Numbers: Proposed Action:
179.2000 Amendment
- 4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 700-4(a) and 700-9(a)
- 5) A complete description of the subjects and issues involved:
By this Notice of Proposed Amendment, the Department proposes to delete the date of incorporation by reference of 49 CFR 179 as of November 1, 1987, and insert in its place the date of October 1, 1990.

A review of the federal regulations adopted since November 1, 1987, indicates there are certain changes made by US DOT which should be reflected in the Department's regulations. This rulemaking will make limited substantive changes in the Department's regulations to bring Part 179 in line with the federal regulations. The following is a summary of the changes in US DOT regulations which are included in the proposed rulemaking.

By proposing this rulemaking, the Department's regulations will incorporate changes made to Part 179 by US DOT in rulemaking Docket:

HM-166W [54 FR 38790 (September 20, 1989)]

Docket HM-166W amended the regulations to incorporate various changes initiated by industry and US DOT to eliminate the need for certain DOT approvals, to reduce a backlog of rulemaking petitions and to update and clarify existing regulations. Specifications requirements were revised in Section 179.300-7.

- 6) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule (amendment, repealer) contain incorporations by reference? Yes. These conform to

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NOTICE OF PROPOSED RULES

Section 6.02(a) of the Illinois Administrative Procedure Act.

- 9) Are there any other amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: Rules do not affect units of local government.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

Any interested party may submit written comments or arguments concerning this proposed rule. Written submissions shall be filed with:

Mr. Tom Crawford, Manager
Regulations and Training Unit
Department of Transportation
Division of Traffic Safety
2300 South Dirksen Parkway
Springfield, Illinois 62764
(217) 785-3064

Comments received within thirty days of the date of publication of this Illinois Register will be considered. Comments received after that time will be considered, time permitting.

12) Initial Regulatory Flexibility Analysis:

- A) Date rule was submitted to D.C.C.A.: January 18, 1991
- B) Types of small businesses affected: Those businesses that offer shipments or carry hazardous materials by highway.
- C) Reporting, bookkeeping or other procedures required for compliance: No new or additional reporting requirements are required for compliance with this Part.
- D) Types of professional skills necessary for compliance: No new or additional professional skills are required for compliance with this Part.

The full text of the Proposed Rule(s) begins on the next page:

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER C: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 179
SPECIFICATIONS FOR TANK CARS

Section
179.1000 General
179.2000 Incorporation By Reference of 49 CFR 179

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act (Ill. Rev. Stat. 1984-99, ch. 95 1/2, pars. 700-4(a) and 700-9(a)).

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 6 Ill. Reg. 4287, effective April 16, 1982; old rules repealed, new rules adopted and codified at 8 Ill. Reg. 19677, effective October 1, 1984; amended at 10 Ill. Reg. 5909, effective April 1, 1986; amended at 10 Ill. Reg. 20824, effective December 1, 1986; amended at 11 Ill. Reg. 4796, effective March 10, 1987; amended at 11 Ill. Reg. 17915, effective October 20, 1987; amended at 12 Ill. Reg. 8102, effective April 21, 1988; amended at ____ Ill. Reg. _____, effective ____.

Section 179.2000 Incorporation By Reference of 49 CFR 179

- a) As Part 179 of the Illinois Hazardous Materials Transportation Regulations the Department incorporates the following sections of 49 CFR 179 by reference, as those sections of the federal hazardous materials transportation regulations were in effect on November 17, 1987 October 1, 1990, subject only to the exceptions in paragraph subsection (b) of this Section. No later amendments to or editions of those sections of 49 CFR 179 of the federal regulations are incorporated.

179.1 General
179.2 Definitions and abbreviations
179.5 Certificate of Construction
179.6 Repairs and alterations
179.10 Tank mounting
179.11 Welding certification
179.12 Interior heater systems
179.300 General specifications applicable to multi-unit tank car tanks designed to be removed from car structure for filling and emptying (classes DOT-106A and 110AW).

179.301 Individual specification requirements for multi-unit tank car tanks.
179.302 Special commodity requirements for multi-unit tank car tanks.

~~No later amendments to or editions of these sections of 49 CFR 179 of the federal regulations are incorporated.~~

- b) The following interpretations of, additions to and deletions from the above incorporated sections of 49 CFR 179 shall apply for purposes of this Part 179 of the Illinois Hazardous Materials Transportation Regulations:

1) All references to "this part" in the incorporated federal regulations shall mean Part 179 of the Illinois Hazardous Materials Transportation Regulations.

2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean ~~Subchapter C of Chapter I of Title 92 of the Illinois Administrative Code~~ 92 Ill. Adm. Code: Chapter I, Subchapter C.

3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations except references to 179.3 shall mean 49 CFR 179.3.

4) 49 CFR 179.2(a)(4) is deleted and replaced by the following: "DOT" means the U.S. Department of Transportation and 'Department' means the Illinois Department of Transportation."

(Source: Amended at ____ Ill. Reg. _____, effective ____.)

DEPARTMENT OF CONSERVATION
NOTICE OF ADOPTED AMENDMENTS

Jack Price
Department of Conservation
524 S. Second Street, Room 485
Springfield, IL 62701-1787

THE FULL TEXT OF THE ADOPTED AMENDMENTS BEGINS ON THE NEXT PAGE:

DEPARTMENT OF CONSERVATION
NOTICE OF ADOPTED AMENDMENTS

1) HEADING OF THE PART: Duck, Goose and Coot Hunting

2) CODE CITATION: 17 Ill. Adm. Code 590

3) SECTION NUMBERS: ADOPTED ACTION:

590.10 Amendments

4) STATUTORY AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.1, 2.2, 2.18, 2.19, 2.20, 2.23, 2.33, 3.5, 3.6, 3.7, 3.8, and 3.10 of the Wildlife Code (Ill. Rev. Stat. 1989, ch. 61, pars. 1.3, 1.4, 1.13, 2.1, 2.2, 2.18, 2.19, 2.20, 2.23, 2.33, 3.5, 3.6, 3.7, 3.8, and 3.10), and Migratory Bird Hunting (50 CFR 20, effective September 29, 1987).

5) EFFECTIVE DATE OF AMENDMENTS: January 22, 1991

6) DOES THIS RULEMAKING CONTAIN AN AUTOMATIC REPEAL DATE? No

7) DO THESE AMENDMENTS CONTAIN INCORPORATIONS BY REFERENCE? No

8) DATE FILED IN AGENCY'S PRINCIPAL OFFICE: January 18, 1991

9) NOTICE OF PROPOSAL PUBLISHED IN ILLINOIS REGISTER: October 19, 1990, 14 Ill. Reg. 17144

10) HAS JCAR ISSUED A STATEMENT OF OBJECTIONS TO THESE RULES: No

11) DIFFERENCES BETWEEN PROPOSAL AND FINAL VERSION: The Main Source Note and Section source note were updated to "15 Ill. Reg."

12) HAVE ALL THE CHANGES AGREED UPON BY THE AGENCY AND JCAR BEEN MADE AS INDICATED IN THE AGREEMENT LETTER ISSUED BY JCAR? Yes

13) WILL THESE AMENDMENTS REPLACE AN EMERGENCY RULE (AMENDMENT, REPEALER) CURRENTLY IN EFFECT? No

14) ARE THERE ANY AMENDMENTS PENDING ON THIS PART? No

15) SUMMARY AND PURPOSE OF AMENDMENTS: This Part was amended, with the approval of the Conservation Advisory Board, to lengthen the season for Canada Geese due to the large increase in the numbers of Canada Geese in Illinois in order to preserve the biological balance.

16) INFORMATION AND QUESTIONS REGARDING THESE ADOPTED AMENDMENTS SHALL BE DIRECTED TO:

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENTS

TITLE 17: CONSERVATION

CHAPTER I: DEPARTMENT OF CONSERVATION

SUBCHAPTER b: FISH AND WILDLIFE

PART 590

DUCK, GOOSE AND COOT HUNTING

Section

- 590.10 Statewide Regulations
 590.20 Permit Controlled Department Sites Only - Duck, Goose and Coot Hunting
 590.25 Illinois Youth Goose Hunting Permit Requirements
 590.30 Duck, Goose and Coot General Hunting Regulations on all Department-Owned and -Managed Sites.
 590.40 Check Station Department Sites Only - Duck, Goose and Coot Hunting
 590.50 Non-Check Station Department Sites Only - Duck, Goose and Coot Hunting
 590.60 Various Other Department Sites - Duck, Goose and Coot Hunting
 590. EXHIBIT A The Non-Toxic Shot Zones of Illinois

AUTHORITY: Implementing and authorized by Sections 1.3, 1.4, 1.13, 2.1, 2.2, 2.18, 2.19, 2.20, 2.23, 2.33, 3.5, 3.6, 3.7, 3.8, and 3.10 of the Wildlife Code (Ill. Rev. Stat. 1989, ch. 61, pars. 1.3, 1.4, 1.13, 2.1, 2.2, 2.18, 2.19, 2.20, 2.23, 2.33, 3.5, 3.6, 3.7, 3.8, and 3.10), and Migratory Bird Hunting (50 CFR 20, effective September 29, 1987).

SOURCE: Adopted at 5 Ill. Reg. 8857, effective August 25, 1981; emergency amendment at 5 Ill. Reg. 11386, effective October 14, 1981, for a maximum of 150 days; codified at 5 Ill. Reg. 10638; part repealed at 6 Ill. Reg. 9647, effective July 21, 1982; new part adopted at 6 Ill. Reg. 11865, effective September 22, 1982; amended at 7 Ill. Reg. 13229, effective September 28, 1983; emergency amendment at 7 Ill. Reg. 13948, effective October 6, 1983, for a maximum of 150 days; amended at 8 Ill. Reg. 18968, effective September 26, 1984; amended at 9 Ill. Reg. 14242, effective September 5, 1985; peremptory amendments at 9 Ill. Reg. 15062, effective September 25, 1985; emergency amendments at 9 Ill. Reg. 15928, effective October 8, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 16588, effective September 22, 1986; emergency amendments at 10 Ill. Reg. 17773, effective September 26, 1986, for a maximum of 150 days; amended at 11 Ill. Reg. 10560, effective May 21, 1987; emergency amendments at 11 Ill. Reg. 15242, effective August 28, 1987, for a maximum of 150 days; emergency expired January 25, 1988; amended at 12 Ill. Reg. 12200, effective July 15, 1988; emergency amendments at 12 Ill. Reg. 16233,

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effective September 23, 1988, for a maximum of 150 days; emergency expired February 20, 1989; emergency amendments at 12 Ill. Reg. 22244, effective December 7, 1988, for a maximum of 150 days; emergency expired May 6, 1989; amended at 13 Ill. Reg. 10525, effective June 20, 1989; amended at 13 Ill. Reg. 14925, effective September 7, 1989; emergency amendments at 13 Ill. Reg. 16579, effective October 4, 1989, for a maximum of 150 days; emergency expired March 3, 1989; amended at 13 Ill. Reg. 17354, effective October 27, 1989; amended at 14 Ill. Reg. 638, effective January 2, 1990; amended at 14 Ill. Reg. 13529, effective August 13, 1990; emergency amendments at 14 Ill. Reg. 17029, effective September 26, 1990, for a maximum of 150 days; amended at 15 Ill. Reg. 1487, effective January 22, 1991.

Section 590.10 Statewide Regulations

- a) Pursuant to Section 2.18 of the Wildlife Code (Ill. Rev. Stat. 1989, ch. 61, par 2.18), it shall be unlawful to take, possess, transport, or use migratory waterfowl except during such period of time and in such manner and numbers as may be provided in the Federal "Migratory Bird Treaty Act" (16 U.S.C. 703-711), the "Migratory Bird Hunting Stamp Act" (16 U.S.C. 1718 et seq.), and annual "Rules and Regulations for Migratory Bird Hunting" (50 CFR 20, effective September 29, 1987) (collectively referred to in this Part as federal regulations), (no incorporation in this Part includes later amendments or editions) or contrary to any State regulations made in the Wildlife Code.
- b) The regulations in Section 2.33 of the Wildlife Code on illegal devices shall apply to this rule, unless federal regulations are more restrictive.
- c) Duck, goose and coot regulations are in accordance with Federal Regulations (50 CFR 20, revised as of October 1, 1989) unless the regulations in this rule are more restrictive. Shooting hours shall be from sunrise to sunset, except at specific sites where shooting hours are more restrictive, or for federally sanctioned experiments where shooting hours may be more liberal.
- d) It shall be unlawful while attempting to take migratory waterfowl to have in possession any shotgun shells prohibited by federal regulations. The only shot approved as non-toxic by the U.S. Fish and Wildlife Service (50 CFR 20) is steel shot, and copper-plated or nickel-plated steel shot for which the plating represents

DEPARTMENT OF CONSERVATION

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less than 1½ the shot's weight. Lead shot plated with copper, nickel, or other material does not qualify. Sites covered by these regulations are as stated in the federal regulations or they are listed under Site Specific Regulations. Only non-toxic shot may be used for hunting waterfowl in the following non-toxic shot zones (see EXHIBIT A):

- 1) Mississippi River and adjacent areas in the following counties bordered by the roads and/or lines indicated below:

A) All of Alexander, Calhoun, Carroll, Hancock, Henderson, Jackson, Jersey, Jo Daviess, Madison, Mercer, Monroe, Pike, Randolph, Rock Island, St. Clair, Union and Whiteside Counties.

B) Adams County: IL-96 (Lima), County Highway (Hwy) 41, County Hwy-7, County Hwy-8, and Lock and Dam 20. The Mark Twain National Wildlife Refuge, Bear Creek Unit is also a nontoxic shot zone.

C) Henry County: I-80 and I-74/280.

- 2) Illinois River and adjacent areas in the following counties bordered by the roads and/or lines indicated below:

A) All of Bureau, Calhoun, Cass, Fulton, Greene, Grundy, Jersey, Marshall, Mason, Peoria, Pike, Putnam, Tazewell and Woodford Counties.

B) Brown County: County Hwy-3/Federal Aid Secondary Route (FAS) 582, FAS-582, County Hwy-12, and IL-99.

C) Morgan County: IL-104 (Meredosia) and IL-100/US-67.

D) Schuyler County: IL-100 (Bluff City) IL-103, and County Hwy-9.

- 3) Southern Illinois Quota Zone

All of Alexander, Jackson, Union and Williamson Counties.

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- 4) Rend Lake Goose Quota Zone
All of Jefferson and Franklin Counties.

- 5) Other Areas

All of Bond, Christian, Clinton, Coles, Cook, DuPage, Fayette, Kane, Kendall, Lake McHenry, Moultrie, Perry, Will and Winnebago Counties.

- e) Emergency Closure

The Department of Conservation (Department or DOC) will close the Canada goose season giving 48 hours notice when quotas established by federal regulations are reached, when harvest in any area is excessive due to extreme weather conditions or when a serious outbreak of infectious disease occurs, such as avian cholera or duck virus enteritis.

- f) Closed Areas and Refuges

- 1) Ducks - Specific habitats, geographical areas, or political land units shall be closed to hunting of specified species of ducks in compliance with federal regulations.

- 2) Geese and Refuges

A) Additional geographical areas or political land units shall be closed to hunting of specified species of geese in compliance with federal regulations.

B) Portions of the following areas are designated as waterfowl refuges and the refuge boundaries are posted or identified on each area posting:

- i) Horseshoe Lake Conservation Area - Alexander County (in the refuge no motors will be allowed from October 15 through December 31 and trolling motors will only be used from January 1 to March 1)

- ii) Rend Lake and Rend Lake Wildlife Management Area

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- iii) Union County Conservation Area (all fishing and boat traffic is prohibited from October 15 through March 1)

g) Migratory Waterfowl Hunting Area Permits (Commercial and Non-Commercial)

- 1) The holder of a permit shall forward within one week after the close of the season or at an earlier time as requested by the Department, a report upon forms furnished by the Department providing information on the hunting season.

- 2) Subsection (g) shall be in accordance with Section 3.7 of the Wildlife Code.

h) Teal Hunting Regulations are located in 17 Ill. Adm. Code 740.

- i) When public duck blinds on State managed sites are flooded to the point that they are no longer usable, but the water level is not too high or rough to be a threat to public safety, the Department, by public announcement and posting, may permit waterfowl hunting anywhere on the area except in designated refuge areas. Any permits issued for the blinds are no longer valid and no fee to hunt the area will be charged.

j) Waterfowl Hunting Zones:

- 1) Northern Zone - That portion of the State north of a line running east from the Iowa border along Illinois Route 92 to U.S. Interstate 280, east along U.S. Interstate 280 to U.S. Interstate 80, then east along U.S. Interstate 80 to the Indiana border.

- 2) Central Zone - That portion of the State south of the northern zone boundary to the Modoc Ferry Landing on the Mississippi River and east along the Modoc Ferry Road to Randolph County Highway 12 to Illinois Route 3, then north to Illinois Route 159, then north to Illinois Route 161, then east to Illinois Route 4, then north to U.S. Interstate 70, then east along U.S. Interstate 70 to the Indiana border.

- 3) Southern Zone - From the southern boundary of the Central Zone south to the remainder of the State.

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- 4) Tri-county Goose Zone - Knox County and the following townships: Fulton County - Buckheart, Canton; Cass - Deerfield, Fairview, Farmington, Joshua, Orion, Putnam, and that portion of Banner Township bounded on the north by Illinois Route 9 and on the east by U.S. Route 24.

- 5) Rend Lake Canada Goose Quota Zone - all lands and waters in Franklin and Jefferson Counties.

- 6) Northeastern Illinois Canada Goose Zone - All lands and waters in the counties of Cook, DuPage, Grundy, Kankakee, Kane, Kendall, Lake, McHenry and Will.

- 7) Southern Illinois Quota Zone (Alexander, Union, Williamson, and Jackson Counties).

- k) No person during the open season shall take or attempt to take wild geese in the Rend Lake Canada Goose Quota Zone except between legal opening and the hour of 3:00 p.m.

- l) The hunting season for Canada Geese in the Southern Illinois Quota Zone shall be lengthened by extending the season from 3:00 p.m. until sunset on January 20, 21, 22, 23 and 24, 1991, unless the season has been closed earlier pursuant to subsection (e).

(Source: Amended at 15 Ill. Reg. 1487, effective January 22, 1991)

DEPARTMENT OF CONSERVATION

NOTICE OF ADOPTED AMENDMENTS

1) HEADING OF THE PART: North Point Marina

2) CODE CITATION: 17 Ill. Adm. Code 220

3) SECTION NUMBERS: ADOPTED ACTION:

220.20 Amendments
220.30 Amendments
220.40 Amendments
220.50 Amendments
220.60 Amendments
220.70 Amendments

4) STATUTORY AUTHORITY: Implementing and authorized by Sections 1 and 4 of "AN ACT in relation to the acquisition, control, maintenance, improvement and protection of State Parks" (Ill. Rev. Stat. 1989, ch. 105, pars. 465 and 468) and by Sections 63a5, 63a15, 63a21 and 63a21.1 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1989, ch. 127, pars. 63a5, 63a15, 63a21 and 63a21.1).

5) EFFECTIVE DATE OF AMENDMENTS: January 22, 1991

6) DOES THIS RULEMAKING CONTAIN AN AUTOMATIC REPEAL DATE? No

7) DO THESE AMENDMENTS CONTAIN INCORPORATIONS BY REFERENCE? No

8) DATE FILED IN AGENCY'S PRINCIPAL OFFICE: January 18, 1991

9) NOTICE OF PROPOSAL PUBLISHED IN ILLINOIS REGISTER: November 19, 1990, 14 Ill. Reg. 16182

10) HAS JCAR ISSUED A STATEMENT OF OBJECTIONS TO THESE RULES: No

11) DIFFERENCES BETWEEN PROPOSAL AND FINAL VERSION:

The Main Source Note and Section Source Notes were updated to "15 Ill. Reg."

In Section 220.30(a)(6), "will" was changed to "shall" and "(In accordance with Ill. Rev. Stat. 1989, ch. 127, par. 141.158)." was added at the end of the paragraph.

In Section 220.30(a)(8), "will" was changed to "shall" in two places.

In Section 220.30(b), "will" was changed to "shall".

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In Section 220.30(c)(1)(B), "will" was changed to "shall".

In Section 220.40(h), "may" was changed to "shall" in two places.

In Section 220.50(b)(2), "must" was changed to "shall" in two places.

In Section 220.60(b)(5), "Section 220.60 (b)(4)" was changed to "subsection (b)(4)".

In Section 220.60(b)(6), "will" was changed to "shall" in three places.

12) HAVE ALL THE CHANGES AGREED UPON BY THE AGENCY AND JCAR BEEN MADE AS INDICATED IN THE AGREEMENT LETTER ISSUED BY JCAR? Yes

13) WILL THESE AMENDMENTS REPLACE AN EMERGENCY RULE (AMENDMENT, REPEALER) CURRENTLY IN EFFECT? No

14) ARE THERE ANY AMENDMENTS PENDING ON THIS PART? No

15) SUMMARY AND PURPOSE OF AMENDMENTS: Language changes include requiring cleaning of dock boxes at end of season; removing name from list if refused slip twice; limiting our ability to reassign boats during boat show; allowing for discount to slip-holder for hot slipping; no charcoal fires on boats, etc.

16) INFORMATION AND QUESTIONS REGARDING THESE ADOPTED AMENDMENTS SHALL BE DIRECTED TO:

Jack Price
Department of Conservation
524 S. Second Street, Room 485
Springfield, IL 62701-1787

THE FULL TEXT OF THE ADOPTED AMENDMENTS BEGINS ON THE NEXT PAGE:

DEPARTMENT OF CONSERVATION
NOTICE OF ADOPTED AMENDMENTS

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF CONSERVATION
SUBCHAPTER a: LANDS AND HISTORIC SITES

PART 220
NORTH POINT MARINA

- Section
- 220.10 Application and Scope
 - 220.20 Compliance
 - 220.30 Marina Slip Acquisition
 - 220.40 Slip Use
 - 220.50 Vessel Condition and Movement
 - 220.60 Fees and Charges
 - 220.70 Other Regulations
 - 220.80 Emergency Boarding of Vessels
 - 220.90 Waiver of Claims

AUTHORITY: Implementing and authorized by Sections 1 and 4 of "AN ACT in relation to the acquisition, control, maintenance, improvement and protection of State Parks" (Ill. Rev. Stat. 1989, ch. 105, pars. 465 and 468) and by Sections 63a5, 63a15, 63a21 and 63a21.1 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1989, ch. 127, pars. 63a5, 63a15, 63a21 and 63a21.1).

SOURCE: Adopted at 13 Ill. Reg. 9269, effective June 6, 1989; amended at 15 Ill. Reg. 1495, effective January 22, 1991.

Section 220.20 Compliance

Based upon the nature of the violation (see Section 220.30(a)(10)(A)), failure to comply with this Part may result in cancellation of the slip permit, in addition to the penalty prescribed by Section 6 of "AN ACT in relation to the acquisition, control, maintenance, improvement and protection of State Parks" (Ill. Rev. Stat. 1989, ch. 105, par. 468b).

(Source: Amended at 15 Ill. Reg. 1495, effective January 22, 1991)

Section 220.30 Marina Slip Acquisition

- a) Permit Conditions and Procedures

- 1) All vessels assigned slips must be registered in accordance with the "Boat Registration and

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Safety Act" (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 311-1 et seq.).

- 2) No permit will be granted in the name of an organization. Permittee must be an individual, and evidence of Permittee ownership (full or partial) or control of the vessel must be presented to the Marina Administrative Office (M.A.O.). Evidence of permittee ownership or control shall be:

- A) Title or Registration;
- B) Bill of Sale or Sales Contract; or
- C) Lease Agreement.

- 3) No permit will be granted until the Permittee demonstrates proof of liability insurance to cover damage to the Marina, other boats or boat owners.

- 4) Permit fees will be based upon the length of the vessel and lease status (seasonal or temporary). See Section 220.60 (Fees and Charges).

- 5) Slip applications will be accepted on a "first-come, first-served" basis pursuant to position on the Applications Wait List administered by the M.A.O. A deposit must accompany the application. See Section 220.60 (Fees and Charges).

- 6) Slip renters must accept the first slip offered, regardless of location. Refusal to accept the first slip offered will result in the applicant's name being moved to the bottom of the list. A refusal to accept the offered slip the following season shall result in the applicant's name being removed from the list and the applicant's deposit shall be forfeited to the Department. (In accordance with Ill. Rev. Stat. 1989, ch. 127, par. 141.158).

- 7) Slip transfers may be requested by slip holders only. Such requests will be maintained and serviced pursuant to a Slip Transfer Wait List administered by the M.A.O. Requests for slip transfers will be given priority over slip applications from non-tenants as slips become available.

- 8) All slip permits Harbor Occupancy Agreements

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willshall be non-transferable and mayshall not be leased or transferred to any other individual.

- 9) The Department of Conservation (Department) shall have the right to temporarily re-assign slip spaces and to move or cause to be moved any vessel so re-assigned. A Permittee, by applying for and accepting the use of a slip shall be deemed to have consented to the temporary re-assignment and movement of his or her vessel to another slip for the proper operation, maintenance, and repair of the North Point Marina; or for the convenience of the Department while making repairs or improvements ~~for a special event such as a boat show (recreational-Basin-only);~~ and in the case of an emergency (See Section 220.80). Permittee further consents to the movement of his or her vessel by Departmental personnel. If, after notice to move the vessel is given by the Department, Permittee fails to comply with such notice, neither the Department nor any of its officials or employees shall be liable to and a Permittee waives all claims for damage to persons and property sustained by a Permittee resulting from the movement of his or her vessel.

10) Cancellation Provisions

- A) By the Department: The Department shall cancel and terminate any permit, upon ten (10) days written notice to the Permittee for the Permittee's failure or refusal to comply with the provisions of the permit, such as nonpayment of slip fees; criminal violations which endanger life or property; or repeated violations (3 or more in one season) of this part or 17 Ill. Adm. Code 110. The Permittee shall not be due any refund of slip fees paid.
- B) By Permittee: The Permittee shall give the Marina office ~~thirty (30) days~~ written notice of intent to vacate. The Permittee shall not be due any refund of slip fees paid.
- C) Removal of Vessel upon Cancellation of Permit: If Permittee shall fail or refuse to remove his or her vessel from a slip or end tie by the date of cancellation of his or her permit, the

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Department will order and cause the vessel to be removed and stored at the Permittee's risk and expense and retake possession of the slip. Neither the Department nor any of its officials or employees shall be liable to and a Permittee waves all claims for damage to persons and property sustained by a Permittee resulting from the movement of his or her vessel pursuant to this provision.

- 11) In the event of the death of a slip holder, the surviving spouse or a child of the slip holder shall have the right of first refusal of the assignment of the slip, subject to the approval of the Department. Approval shall be based upon such considerations as the survivor's history of compliance with Department rules and proper utilization of the Marina facilities.

b) Slip Renewals Applications

~~Slip renewal applications~~For slip renewal, the Harbor Occupancy Agreement must be received by the Department no later than December 31, of any given year. If the ~~renewal application~~Harbor Occupancy Agreement has not been received by that date the slip willshall be vacated.

c) Slip Vacancies

- 1) Vacancies in slips shall be filled as follows:

- A) The vacant slip will be made available to current slip holders registered on the Slip Transfer Waiting List in order of appearance.
- B) If no transfer request fills the vacancy within ~~30~~10 days, the slip willshall be made available to individuals registered on the Applications Wait List in order of appearance.

2) Sale of Permittee's Vessel

- A) A Permittee may retain his or her designated slip for a period of thirty (30) days after transferring title or agreeing to sell his or her vessel provided the Permittee shall notify the Department in writing within five (5) days of the date Permittee enters into an agreement

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etc.). Vessels may be measured by Marina staff in the slip after occupancy. No vessel having a vessel length (LOA) exceeding 3 feet longer than the designated slip length will be permitted. Vessels with an overall length (LOA) less than 5 feet of the slip length will not be permitted without written permission of the M.A.O. Permission will be based upon maximum utilization of the Marina facility resources. Violation of this provision will result in cancellation of the slip assignment.

- 2) Vessel Extending Beyond Slip: A vessel shall not extend more than 3 feet beyond the end of any finger float including but not limited to the vessel's davits, booms, swingstop, bowsprit or bow pulpit.
- 3) No part of any vessel shall extend over the main walkway.

b) Vessel/Slip Occupancy

- 1) Slips shall be available for occupancy from April 1 through October 31, weather permitting. Boats not being stored for the winter season at North Point Marina must be removed from the Marina by October 31. If boats have not been removed by October 31, the M.A.O. has the authority to remove the vessel and charge the owner for cost of removal and temporary storage fees until the vessel is removed from the site.

- 2) The assigned slip must be occupied by a vessel registered to the slip renter within 60 days after notification that the slip is available for occupancy, unless given written permission by the M.A.O. due to such circumstances as dry-dock time, unforeseen mechanical problems or unavailability of parts.

- 3) The Permittee shall notify the harbor office anytime his/her vessel will be occupied by any person other than the Permittee or his or her family.

- 4) No ~~minors~~ one under 18 years of age is to stay overnight on any vessel moored in the Marina without an adult present or without written permission from the M.A.O. Permission will be based upon such considerations as age of the minors, reason for the

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for the sale of the vessel and his or her intent to acquire another vessel. An extension of an additional period, but not to exceed sixty (60) additional days will be granted by the Department upon submission by Permittee of proof of a contract to purchase or construct another vessel. A further extension may be granted to commercial operators upon showing of a contract to purchase a different boat and a delivery date, not to exceed opening day of the next season.

- B) Permittee shall notify the Department in writing within five (5) days of any change of ownership in his or her vessel resulting from a gift, sale, lease, withdrawal, addition, or substitution of partners, the sale or transfer of stock in a closely held corporate owner of the vessel or a change of officers or directors of a closely held corporation owning the vessel.

d) Visiting Vessel Temporary Slip Permits

- 1) The M.A.O. may provide temporary slip permits to vessels visiting the Marina. See Section 220.60 (Fees and Charges).
- 2) No temporary permit may last longer than 15 days.
- 3) The M.A.O. may assign temporary use of an already leased slip under limited slip vacancy conditions. See Section 220.40 (Slip Use).
- 4) Temporary permits may be renewed for a like period at the discretion of the M.A.O., based upon permittee's compliance with Department rules and slip availability.

(Source: Amended at 15 Ill. Reg. 1495, effective January 22, 1991)

Section 220.40 Slip Use

a) Vessel Length Limitations

- 1) Vessel length (length over all - LOA) includes all appendages (swim platform, bowsprit, anchor chock,

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stay, and length of the stay.

- 5) Slip holders desiring to live aboard their vessel must make application with the M.A.O. at least 24 hours in advance, for liveaboard status of 14 days or more. The M.A.O. may deny or terminate any application for liveaboard status, based upon such considerations as violations of Department rules, or safety.

- 6) The M.A.O. reserves the right to use permanent slips for transient vessels. Permanent slip holders shall notify the Marina office if they expect to leave their slip unoccupied for a period of 48 hours or longer and their expected date and time of return to the Marina. Transient vessels shall use their own dock lines and shall not use those of the permanent slip holder. Owners of transient vessels must vacate the temporarily assigned permanent slip upon notification by the M.A.O. or on the return of the permanent slip holder's vessel to the Marina. Slip holders who comply with the required notification shall receive solely as a credit against the next season's rental, 10% of the amount charged transient vessels using the slip holder's slip unless the slip holder returns prior to the expected date or time of return and such early return necessitates moving the transient vessel.

- c) Rowboat/yacht tenders; One rowboat, dingy, or yacht tender owned by the permittee and regularly used as a yacht tender, or a personal watercraft owned by the permittee, may be kept in the permittee's slip. This rowboat, dingy, or yacht tender or personal watercraft shall not extend into the fairway.

- d) Storage on Docks and Fingers: Nothing shall be stored on the docks and fingers except in locker boxes provided on each slip. When a vessel is removed at the end of the season or due to cancellation, the locker box must be cleaned out. Any items not removed from the locker box shall be deemed abandoned and become property of the Department.

- e) Dock Modification: There shall be no modification of the dock or installation of fenders, dock wheels, etc., without written permission by the M.A.O. Such permission shall be granted if the modification, based upon

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published marine engineering standards, ~~is approved by the Department's chief engineer,~~ does not create a safety hazard, does not conflict with the Department's Master Management Plan, and is not aesthetically displeasing.

- f) Steps: Any steps used for ingress and egress from a vessel shall not be wider than half the width of the finger to which the vessel is moored. These steps shall not be used as a storage locker.

- g) Drying of Laundry: Drying or airing of laundry or apparel on the dock or rigging of the vessel is not permitted.

- h) Commercial Activity: Charter boat operators will be assigned to the commercial harbor. Only permittees in the commercial harbor will be permitted to advertise on their boats. No sign of any kind will be permitted on the docks. Charter boat slip fees will be the same as that for the main harbor. ~~Operators must have a valid charter captain's license and the required U.S. Coast Guard documentation. No one other than licensed Charter Boat Operators shall engage in charter boat activities. No Charter Boat Operator shall pick up or discharge passengers in the recreational basin.~~

(Source: Amended at 15 Ill. Reg. 1495, effective January 22, 1991)

Section 220.50 Vessel Condition and Movement

a) Inspections

Any individual applying for a permit or having a permit issued thereby impliedly agrees that the Department may examine his or her vessel at any time without prior notice at reasonable hours for the purpose of verifying compliance with all applicable rules.

b) Vessel Condition

- 1) Seaworthiness: Any vessel moored in the Marina shall be seaworthy at all times and be able to get underway by its own power. In the event a vessel becomes unsafe or unseaworthy, the slip permit may be revoked by the Department. The M.A.O. shall give written notice to the slip holder of those items that render the vessel unsafe or unseaworthy. The

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slip holder shall undertake repairs or refurbishing within twenty (20) days of receipt of notice or such permit will be revoked. Failure to comply with these provisions shall authorize the Department to have the vessel removed and to charge the removal and storage to the Permittee.

- 2) Vessel Maintenance: Limited maintenance such as tune-ups, interior-cleaning and line replacement of docked vessels in the recreational harbor is permitted during daylight hours only. ~~Extensive repairs, such as hull repairs, engine overhauls and spray painting, must be completed outside the slip area.~~ Such maintenance activities ~~must~~ shall not generate paint aerosols, dusts, other particles or material which will deposit upon docks, nearby vessels or other facilities; not produce odors, vapors/gases which will prove offensive or pose health, fire, or other safety hazards. ~~Extensive repairs, such as hull repairs, engine overhauls and spray painting, shall be completed outside the slip area.~~ The use of open flame devices (welding torches, blow torches, etc.) or electrical welders shall not be permitted without express permission (based upon safety) of the Department. Only boat repair, service or other type vendors that have been authorized by the Department shall be permitted to perform work on any vessel at the Marina. Emergency repairs may be made at a slip upon written approval of the M.A.O. (See Section 220.80). Any waste products (oil, paint, solvents, etc.) shall be disposed of only in designated areas.

- 3) Boat Mufflers: ~~No person shall drive, operate or use any vessel, craft or float propelled by an internal combustion engine equipped with a muffling device which has been altered in any manner from the manufacturer's specifications so as to increase its emission of noise.~~

- 4) Sail Boat Rigging: All sail rigging shall be tied down while at the slip to insure against noise being produced by the rigging.

- 5) Wrecked or Sunken Vessels: In the event of a wrecked or sunken vessel, the Permittee is responsible for marking the accident site, raising the craft and the disposition of the vessel.

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c) Vessel Movement

- 1) Movement of vessels within the Marina shall be for the purposes of entering or leaving a slip, pump out station or fuel dock. All vessels underway in the Marina shall be under power. Sailing within the Marina is prohibited. The use of jet skis, sail boards, or other personal watercraft within the Marina is prohibited.

- 2) Fueling: Fueling of vessels can only be done at the designated fuel dock in the Marina.

(Source: Amended at 15 Ill. Reg. 1495, effective January 22, 1991.)

Section 220.60 Fees and Charges

- a) All fees and charges may be paid in the form of cash, check or money order. Transient rentals only may be paid by approved credit card.

b) Slip Rental - Seasonal

- 1) Slip rental fees will be based upon slip length or overall length of vessel (including all appendages), whichever is greater. ~~Vessels may be measured by Marina staff in the slip after occupancy.~~

- 2) A (one-time) \$200 deposit must accompany the application for a slip. This deposit is non-refundable and will be applied to the first year's slip rent.

- 3) Slip rental rates are \$60.00 per foot per season for each foot of slip or each foot of vessel, whichever is greater.

- 4) Payment Schedule: Slip rental is due according to the following schedule:

~~50% by March 125% by December 31~~
~~25% by May 125% by February 28~~
~~25% by July 125% by April 30~~
~~25% by June 30~~

- 5) Rent will be pro-rated for partial season occupancy

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by new applicants, based on the proportion of the season remaining at time permittee is notified the slip is available. (Season shall be calculated as April-June 1 through October 31 for pro-rata purposes). There shall be no pro-rata discounting for any vessel offered a slip prior to June 2. Payment schedule shall conform, as nearly as possible, to the schedule set out in Section 220-60 subsection (b)(4). (Example: permittee notified on May-June 15 that slip is available. Must pay 75% of pro-rated amount immediately and 25% of pro-rated amount by July-June 30).

- 6) Late Charges: ~~For payments not submitted by the scheduled due date, a late charge of 5% of the amount due will~~ shall be assessed per month. No boat will be allowed to occupy initial occupancy of the assigned slip until the first all scheduled payments (including late charges) have been made. Any slip rental payment more than 60 days in arrears will result in lease termination and boat impoundment.

c) Slip Renting - Temporary

Visiting vessels will be charged the following rates:

\$15 per day for vessels 30 feet and under.

\$15 per day plus one dollar per day for each foot over 30 feet LOA.

~~\$10 security card deposit (refundable if turned in upon departure).~~

One day free for every 7 consecutive days paid.

d) Rate Changes

The Department of Conservation reserves the right to change rates.

e) Utilities

Normal utility use is included in slip rental fees. Excess use (defined as consumption beyond average consumption of a similar size boat), as determined by the M.A.O., will be billed at the rate charged Conservation

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by the respective utilities.

(Source: Amended at 15 Ill. Reg. 1495, effective January 22, 1991)

Section 220.70 Other Regulations

- a) Quiet Hours: Quiet hours from 11:00 p.m. to 7:00 a.m. shall be observed in the Marina. During this period, no loud noise or instrument producing or reproducing sound shall be used in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants. The sounding of horns as required by Marine Rules of the Road is not a violation of quiet hours.

- b) Sanitation and Refuse: All trash must be placed in the provided dumpsters located at the head of each walkway. No sanitary or any marine discharge is allowed in the basin. Pump out stations are provided in the main basin and at the fuel dock. All trash shall be placed in plastic garbage bags prior to disposing in the dumpsters. Fish cleaning shall be done at designated areas only. Fish cleaning is allowed aboard docked vessels in the commercial basin provided that all refuse is placed in plastic bags and deposited in the designated containers at the fish cleaning station. The use of red plastic bags is prohibited.

c) Motor Vehicle Traffic and Parking:

- 1) Visitors will park in the visitors lot only.
- 2) Permittee Parking: Two (2) magnetic cards which will provide access to the parking area, main headwalks and shower/restroom buildings will be issued to each permittee. Any misuse of these cards may be cause for termination of the slip permit. There will be a \$25 charge for replacement of lost cards.
- 3) Removal of Vehicles: Any vehicle in violation of parking regulations may be towed at the expense of the vehicle owner in accordance with the Illinois Vehicle Code (Ill. Rev. Stat. 1987-1989, ch. 95 1/2, pars. 1-100 et seq.).
- 4) Occupancy of any parked vehicle in the public areas between the hours of one a.m. and five a.m. shall

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be unlawful without written permission from the M.A.O. displayed in the left front windshield area.

- d) Bicycles and Motorcycles: No person shall roller skate, skateboard, ride bicycles or motorcycles on the docks and gangways within the Marina or upon the boardwalk.
- e) Security Gates: The security gates to the main piers are not to be blocked open at any time. Any tampering of the Marina security systems may be cause for termination of the slip permit. Termination shall be based upon such considerations as the nature of damages or threat to security. All persons within the secured area of the Marina shall identify themselves upon request by Marina personnel.
- f) Swimming/diving: Swimming and diving are not permitted within the protected harbor areas of the Marina.
- g) Fishing: ~~Pete~~Fishing is prohibited within the Harbor except that pole and line fishing only is permitted in designated areas on the breakwater and on vessels berthed at slips. ~~Fishing from the breakwater shall only be on the lake-side.~~ No line shall extend into any fairway or maneuvering area. ~~Fishing in a non-permitted area or by any non-permitted method is prohibited.~~
- h) Cooking: No cooking or barbecuing shall be permitted except in designated areas or on the slip holder's vessel. Used charcoal and ash shall be deposited in designated containers only. No charcoal grills or charcoal lighter shall be used on docks or vessels in the marina.
- i) Lost and Found: All found items should be taken to the M.A.O.'s office.
- j) Commercial Activity: No commercial advertising or solicitation is permitted in the recreational basin. A slip holder may place a single 8 1/2 x 11" For Sale sign within the vessel. The use of any boat as a demonstrator by a boat dealer shall be regulated by the vendor regulations which shall be published by the Department.
- k) Tampering with or boarding other vessels without permission is prohibited. ~~Violators may be subject to prosecution.~~

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- 1) Anchoring: Except in cases of emergency (see Section 220.80), no boat shall anchor in North Point Marina waters.

(Source: Amended at 15 Ill. Reg. 1495, effective January 22, 1991)

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DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES

NOTICE OF ADOPTED RULES

Illustration E

- 4) Statutory Authority: Implementing Ill. Rev. Stat. 1989, ch. 91, pars. 1802-1 et seq. and 1803-1 et seq.; authorized by Ill. Rev. Stat. 1989, ch. 91, pars. 5-104, 100-5, as amended by P.A. 86-1324, effective September 6, 1990, and 1802-16.
- 5) Effective Date of Rules: January 22, 1991
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Do these rules contain incorporations by reference? Yes. These rules contain incorporations by reference in accordance with Section 6.02(a) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1989, ch. 127, par. 1006.02(a)).
- 8) Date Filed in Agency's Principal Office: January 17, 1991.
- 9) Notice(s) of Proposal Published in Illinois Register: September 14, 1990 (14 Ill. Reg. 14671).
- 10) Has JCAR issued a Statement of Objections to these amendments? No.
- 11) Difference(s) between proposal and final version:

The following changes were made in response to the Administrative Code Division's suggestions:

The Administrative Code Division did not suggest any changes.

The following changes were made as a result of agreements made between the Department and the Joint Committee on Administrative Rules:

Table of Contents - The heading for Section 117.Appendix A was changed to read "Preliminary application forms".

Section 117.120 - In the definition of "(a)dult", the word "inclusive" was added.

In the definition of "(f)amily", the phrase "as defined by this Section" was added.

The definition for "(l)icensed clinical psychologist" was added.

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DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES

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- 1) Heading of the Part: Family Assistance and Home-Based Support Programs for Persons with Mental Disabilities

- 2) Code Citation: 59 Ill. Adm. Code 117

Adopted Action:

117.100 New Section
117.110 New Section
117.115 New Section
117.120 New Section
117.125 New Section
117.130 New Section
117.135 New Section
117.140 New Section
117.145 New Section
117.200 New Section
117.205 New Section
117.210 New Section
117.215 New Section
117.220 New Section
117.225 New Section
117.230 New Section
117.235 New Section
117.240 New Section
117.300 New Section
117.305 New Section
117.310 New Section
117.315 New Section
117.320 New Section
117.325 New Section
117.330 New Section
117.335 New Section
117.340 New Section
117.245 New Section
117.350 New Section
117.Appendix A New Section

117.Appendix B New Section
117.Appendix C New Section
117.Appendix D New Section
117.Appendix E New Section
117.Appendix F New Section
117.Appendix G New Section
117.Appendix H New Section
117.Appendix I New Section
117.Appendix J New Section
117.Appendix K New Section
117.Appendix L New Section
117.Appendix M New Section
117.Appendix N New Section
117.Appendix O New Section
117.Appendix P New Section
117.Appendix Q New Section
117.Appendix R New Section
117.Appendix S New Section
117.Appendix T New Section
117.Appendix U New Section
117.Appendix V New Section
117.Appendix W New Section
117.Appendix X New Section
117.Appendix Y New Section
117.Appendix Z New Section

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In the definition of "(o)wn home", the phrase following the second set of parenthesis was deleted.

In the definition of "(r)egion", the name of the statute and citation were updated.

The definitions for "(s)ervice facilitation" and "(s)ervice facilitator" were put in the correct alphabetical order.

In the definition of "(s)evere mental illness", the phrase "as now or hereafter revised" was deleted.

Section 117.130 - The phrase "by the Department" following the word "disseminated" in the first line, the word "to" before the phrase "persons who have contact" and the parenthetical reference were added. The phrase "by the Department, the Departments of Public Aid, Rehabilitation Services, Children and Family Services and Public Health and the State Board of Education, and advocacy and provider organizations" following the word "Part" in the first sentence was deleted.

Section 117.140(c) - The word "clinical" before the word "psychologist" and the phrase following the word "psychologist" were added to the first sentence.

Section 117.140(d) - The word "clinical" before the word "psychologist" was added to the first sentence. In the third sentence, the word "shall" was substituted for the word "should".

Section 117.140(e) - The word "clinical" was added before the word "psychologist" and the phrase following the word "psychiatrist" was deleted in the first sentence.

Section 117.140(f) - The word "clinical" was added before the word "psychologist" in the first sentence. In the last sentence, the word "shall" was twice substituted for the word "must".

Section 117.140(f)(2)(B)(i) and (ii) - The phrase following the word "defined" was added.

Section 117.140(j) - The phrase following the word "Department" was deleted.

Section 117.145(b) - Added, causing all following subsections to be relabeled.

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Section 117.145(c)(relabeled) - The address was changed.

Section 117.145(d)(relabeled) - Rewritten.

Section 117.145(e)(relabeled) - The phrase "later than 60 days after receiving the notice of appeal, unless the appeal is terminated at the pre-hearing conference" was substituted for the phrase "less than 10 days in advance of the date of such hearing" in the first sentence.

Section 117.145(g)(6)(relabeled) - New - same as Section 117.145(g) in proposed. All following subsections were relabeled.

Section 117.145(g)(10)(relabeled) - Rewritten.

Section 117.145(f)(10) and (11)(proposed) - Deleted.

Section 117.145(h) and (i) - Added, causing the following subsections to be relabeled.

Section 117.145(h)(i) and (j)(proposed) - Deleted.

Section 117.200(a) - The opening sentence was deleted.

Section 117.200(b)(7) - The semicolon was substituted for the period.

Section 117.200(b)(8) - Added.

Section 117.215(a) - The phrase "service agencies, organizations" was substituted for the phrase "Department-designated agencies and".

Section 117.225(b) - The comma and the phrase "organization or an individual" were added.

Section 117.305(b) - The word "clinical" was added before the word "psychologist" in the first sentence.

Section 117.Appendix A - The heading was changed to read "Preliminary application forms".

Section 117.Appendix B, Illustration D and E - Revised.

The following changes were made in response to public comment:

Section 117.115(j) - Added.

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16) Information and questions regarding these adopted rules shall be directed to:

Name: Rules Administrator
Address: 402 Stratton Building
Springfield, IL 62765
Telephone: (217)785-3313

The full text of the Adopted Rules begins on the next page:

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Section 117.120 - In the definition of "(s)ervice facilitation", the word "adult" in the first line and the last six lines were added.

In the definition of "(s)ervice/treatment plan" or "plan", the phrase "a service agency" was substituted for the phrase "an agency" and the phrase following the word "agency" was added.

Section 117.205(c) - The last sentence was added.

Section 117.215(a) - The phrase "and/or individuals" was added.

Section 117.240(a)(3) - The word "or" was added.

Section 117.240(a)(4) - A period was substituted for the semicolon and the word "or".

Section 117.240(a)(5) - Deleted.

Section 117.325 - The last sentence was added.

The Department made the following technical changes:

The main source note was updated to add recently approved legislation.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes, all changes have been made. See item (11) above.

13) Will these rules replace an emergency rule? These rules replace emergency rules adopted September 4, 1990 (14 Ill. Reg. 14987, September 14, 1990) which expire February 1, 1991.

14) Are there any amendments pending on this Part? No.

15) Summary and Purpose of Rulemaking:

The Home-Based Support Services Law authorizes the Department to encourage, develop, sponsor and fund home-based services for adults who are mentally disabled in order to provide alternatives to institutionalization and to permit them to remain in their own homes.

The Family Assistance Law for Mentally Disabled Children mandates the Department to strengthen and promote families who provide care within the family home for children whose level of mental illness or developmental disability constitutes a risk of out-of-home placement.

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TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES

PART 117
FAMILY ASSISTANCE AND HOME-BASED
SUPPORT PROGRAMS FOR PERSONS WITH MENTAL DISABILITIES

SUBPART A: GENERAL PROVISIONS

Section	
117.100	Purpose
117.110	Incorporation by reference
117.115	Principles
117.120	Definitions
117.125	Individuals' records and informed consent
117.130	Outreach plan
117.135	Preliminary application process
117.140	Application and eligibility determination process
117.145	Hearings and appeals

SUBPART B: HOME-BASED SUPPORT SERVICES PROGRAM

117.200	Eligibility criteria
117.205	Notice of eligibility and service authorization
117.210	Notice of ineligibility and right to appeal
117.215	Services and funding provisions
117.220	Service facilitation services
117.225	Service/treatment plan
117.230	Selection of services
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117.240	Service termination

SUBPART C: FAMILY ASSISTANCE PROGRAM

117.300	Eligibility criteria
117.305	Eligibility determination process
117.310	Notice of eligibility or ineligibility
117.315	Right to appeal
117.320	Services and funding provisions
117.325	Service facilitation services
117.330	Stipend termination
117.335	Right to investigate suspected fraud
117.340	Denial of other services
117.345	Maximizing the use of other agency services

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117.350	Out-of-home placement
117.355	Preliminary application forms
117.360	Illustration A - DMHDD-1235, Home-Based Support Services Program Application
117.365	Illustration B - DMHDD-1236, Family Assistance Program Application
117.370	Illustration C - DMHDD-1237.1, Eligibility Determination - Primary Examiners - Adults with a Severe Mental Illness
117.375	Illustration D - DMHDD-1237.2, Eligibility Determination - Primary Examiners - Children with Severe Emotional Disturbance
117.380	Illustration E - DMHDD-1237.3, Eligibility Determination - Primary Examiners - Children and Adults with Severe Autism
117.385	Illustration F - DMHDD-1237.4, Eligibility Determination - Primary Examiners - Children and Adults with Severe or Profound Mental Retardation
117.390	Illustration G - DMHDD-1237.5, Eligibility Determination - Primary Examiners - Children and Adults with Severe and Multiple Impairments

AUTHORITY: Implementing the Home-Based Support Services Law for Mentally Disabled Adults (Ill. Rev. Stat. 1989, ch. 91½, par. 1802-1 et seq.) and the Family Assistance Law for Mentally Disabled Children (Ill. Rev. Stat. 1989, ch. 91½, par. 1803-1 et seq.) and authorized by Section 2-16 of the Home-Based Support Services Law for Mentally Disabled Adults (Ill. Rev. Stat. 1989, ch. 91½, par. 1802-16), Section 5-104 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1989, ch. 91½, par. 5-104) and Section 100-5 of the Department of Mental Health and Developmental Disabilities Act (Ill. Rev. Stat. 1989, ch. 91½, par. 100-5, as amended by P.A. 86-1324, effective September 6, 1990).

SOURCE: Adopted at 15 Ill. Reg. 1511, effective January 22, 1991.

NOTE: Bold-face type denotes statutory language.

SUBPART A: GENERAL PROVISIONS

Section 117.100 Purpose

- a) The purpose of the Home-Based Support Services Law for Mentally Disabled Adults (Ill. Rev. Stat. 1989, ch. 91½, par. 1802-1 et seq.) is to authorize the Department to encourage, develop, sponsor and fund home-based and community-based services for adults who are mentally disabled in order to provide alternatives to institutionalization and to permit them to remain in their own homes (Section 2-2 of the Home-Based Support Services Law).

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- b) The purpose of the Family Assistance Law for Mentally Disabled Children (111. Rev. Stat. 1989, ch. 91½, par. 1803-1 et seq.) is to create a mandate for the Department to strengthen and promote families who provide care within the family home for children whose level of mental illness or developmental disability constitutes a risk of out-of-home placement. It is intended to strengthen, promote and empower families to determine the most appropriate use of resources to address the unique and changing needs of those families' mentally disabled children (Section 3-2 of the Family Assistance Law).

Section 117.110 Incorporation by reference

Any rules of an agency of the United States or of a nationally-recognized organization or association that are incorporated by reference in this Part are incorporated as of the date specified, and do not include any later amendments or editions.

Section 117.115 Principles

- a) Individuals and their families or legal guardians shall select the needed supports and services.
- b) Individuals shall live in homes of their choosing in communities with or near family and friends and other individuals who are important to them.
- c) Services shall be designed as described in Subparts B and C and provided to enhance the individual's existing natural social support network of family, friends, and acquaintances within the larger community of persons without disabilities, as well as social contacts among peers and paid caregivers.
- d) Individuals and their families or legal guardians shall be permitted to experience decision-making and risk in order to enhance personal growth.
- e) Individuals shall not be obligated to participate in a particular training program or activity because it is part of the program structure or for the convenience of staff.
- f) The type, intensity and source of support services shall vary according to the individual's needs, other supports available and personal preferences. shall promote community integration, independence and self-sufficiency, and shall change as the individual's needs and preferences change.

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- g) Training and assistance shall be provided to the extent possible in natural environments during the course of a normal day. This includes participating in general community life, school, work and leisure activities and accessing general community goods and services, rather than participating primarily or only within the service system with other persons with disabilities and paid caregivers.
- h) The values of integration, individuality, personal choice and skill enhancement shall also encompass health, leisure and recreational activities, social services and education, as well as family and home-based supports.
- i) Use of generic (non-disability) community resources such as church, Y.M.C.A., Y.W.C.A., educational, clubs, shopping and recreation shall be preferred over segregated programs for special populations, to the extent consistent with the needs of the individual and family. However, if it is difficult for the individual to use generic resources without support, support tailored to the individual's needs shall be offered.
- j) Family support must focus on the family unit. Family support should be broadly defined so as to respond to the needs of all members of the family, including the individual with a developmental or mental disability, parents, siblings, and other extended family members living within the household.

Section 117.120 Definitions

Unless the context otherwise requires, the terms used in this Part have the meanings ascribed to them in this Section.

"Abuse." Any physical injury, sexual abuse or mental injury inflicted on an individual other than by accidental means (Section 1-101.1 of the Code).

Physical injury includes all injuries serious enough to require immediate medical treatment by a physician, such as fractures and lacerations which require suturing and all other injuries which because of the circumstances or nature of the injury indicate possible abuse or neglect;

Sexual abuse includes but is not limited to any sexual penetration or sexual conduct between an individual and other person if the individual has been adjudicated legally disabled, or has a guardian, or is unable to understand the

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"Crisis management." Emergency services of an intensive nature to alleviate stressful situations.

"Day." A calendar day unless otherwise specified.

"Department." The Department of Mental Health and Developmental Disabilities.

"Department-funded out-of-home placement services." Those services for which the Department pays the partial or full cost of care of the residential placement.

"Developmental disability." Disability which is attributable to mental retardation, cerebral palsy, epilepsy or autism; or to any other condition which results in impairment similar to that caused by mental retardation and which requires services similar to those required by a mentally retarded person. Such disability must originate before the age of 18 years, be expected to continue indefinitely, and constitute a substantial handicap (Section 1-106 of the Code).

"Developmentally disabled." Having a developmental disability.

"Director." The Director of the Department of Mental Health and Developmental Disabilities or his/her designee (Section 1-108 of the Code).

"DSM-III-R." The Diagnostic and Statistical Manual of Mental Disorders, Third Edition, revised (DSM-III-R, American Psychiatric Association, 1987 edition).

"Employment-related services." Services which allow an individual to participate in employment or which prepare an individual for future participation in employment.

"Epilepsy." A chronic disorder of the brain which is categorized by the tendency to have recurrent seizures. Seizures are sudden, uncontrolled episodes of excessive electrical discharges of brain cells with associated sensory, motor and/or behavioral changes.

"Family." The spouse and children and the parent or parent substitute, as defined by this Section, sister, and brother of an individual.

"Family Assistance Law." The Family Assistance Law for Mentally Disabled Children (Ill. Rev. Stat. 1989, ch. 91½, par. 1803-1 et seq.).

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nature of the act or is unable to give knowing consent, or is injured, or alleges that there is, or there is evidence of, use of force, coercion, or the exchange of money or anything of value; and

Mental injury includes use of words, signs, gestures or other actions by anyone against an individual which intimidates, demeans, harasses, causes emotional anguish or distress, ridicules, threatens, harms or shall knowingly incite or precipitate maladaptive behavior on the part of an individual. Mental injury also includes exploitation, which is any act that uses individuals, their resources or their possessions for an agency employee's personal gain or for an agency's benefit.

"Act." The Mental Health and Developmental Disabilities Confidentiality Act (Ill. Rev. Stat. 1989, ch. 91½, par. 801 et seq.).

"Adult." A person between the ages of 18 and 60 years, inclusive.

"Agency." A community mental health or developmental services organization which is a sole proprietorship, association, partnership, corporation or organization, public or private, either for profit or not for profit.

"Autism." A lifelong developmental disability which is manifested by a combination of significant disturbances in intellectual, sensory, cognitive, social, psychological, and emotional functioning and is distinguished from other related disorders by impaired or disordered language and communication; failure to develop appropriate social relationships; ritualistic or compulsive behaviors.

"Cerebral palsy." A disorder dating from birth or early infancy, non-progressive, characterized by absence or aberrations of motor function (paralysis, weakness, incoordination) and of the other manifestations of organic brain damage such as sensory disorder, seizures, mental retardation, learning difficulty and behavior disorders.

"Child." A person who is 17 years old or younger.

"Code." The Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1989, ch. 91½, par. 1-100 et seq.).

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"Goal." An expected result or condition that involves a specified period of time to achieve, that is specified in behavioral terms in a statement of relatively broad scope, and that provides guidance in establishing specific objectives directed toward its attainment.

"Habilitation." An effort directed toward the remediation of a disability or toward increasing an individual's level of physical, mental, social or economic functioning, independence and self-respect. Habilitation may include, but is not limited to, diagnosis, evaluation, medical services, residential care, day care, special living arrangements, training, education, sheltered employment, protective services, counseling and other services through interaction and participation in the community (Section 1-111 of the Code).

"Home-based services." Services provided to a mentally disabled adult who lives in his/her own home. These services may include but are not limited to: home health services, service facilitation, crisis management, training and assistance in self-care, personal care services, habilitation and rehabilitation services, employment-related services, respite care, and other skill training that enables a person to become self-supporting (Section 2-3 of the Home-Based Support Services Law).

"Home-Based Support Services Law." The Home-Based Support Services Law for Mentally Disabled Adults (Ill. Rev. Stat. 1989, ch. 91½, par. 1802-1 et seq.).

"Illinois resident." An individual legally admitted to the United States who lives in Illinois, and has no present intention to move from Illinois.

"Individual" or "individuals." A person or persons who receives or receive services or support as described in this Part.

"Informed consent." Permission voluntarily granted by the individual or guardian for the release of information, for participation in the program services specified in the service/treatment plan or for the use of a specific procedure in the plan. Informed consent means full disclosure to the individual or guardian of the information required for him or her to make the decision intelligently.

"Legal guardian." The court-appointed guardian or conservator of the person (Section 1-110 of the Code).

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"Licensed clinical psychologist." A clinical psychologist licensed by the Clinical Psychologist Licensing Act (Ill. Rev. Stat. 1989, ch. 1111, par. 5351 et seq.).

"Mental disability." A developmental disability, a mental illness in an adult or an emotional disturbance in a child.

"Mentally disabled adult." A person between the ages of 18 and 60 years who lives in his or her own home; who needs home-based services, but does not require 24-hour-a-day supervision; and who has one of the following conditions: severe autism, severe mental illness, severe or profound mental retardation, or severe and multiple impairments (Section 2-3 of the Home-Based Support Services Law).

"Mental retardation." Significantly subaverage general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years (Section 1-116 of the Code).

"Natural support network." A social circle affiliated with an individual that may include, but is not limited to, family members, friends, co-workers and peers.

"Neglect." Failure to provide adequate medical or personal care or maintenance to an individual, which failure results in physical or mental injury to an individual or in the deterioration of the individual's physical or mental condition (Section 1-117.1 of the Code).

"Objective." An expected result or condition that involves a specified period of time to achieve, that is specified in behavioral terms and that is related to the achievement of a goal.

"Own home." In one's "own home" means that a mentally disabled adult lives alone; or that a mentally disabled adult is in full-time residence with his or her parents, legal guardian, or other relatives; or that a mentally disabled adult is in full-time residence in a setting not subject to licensure under the Nursing Home Care Act (Ill. Rev. Stat. 1989, ch. 111½, par. 4151 et seq.) or the Child Care Act of 1969 (Ill. Rev. Stat. 1989, ch. 23, par. 2211 et seq.), as now or hereafter amended, with 3 or fewer other adults unrelated to the mentally disabled adult who do not provide home-based services to the mentally disabled adult. (Section 2-3 of the Home-Based Support Services Law).

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disability; adults with mental illness; adults with a developmental disability. Within each of the separate pools of applicants identified above, a computer shall randomly number all preliminary applications from one through the number of applications within that pool. The proper number of persons to be enrolled from each pool shall be chosen according to the per capita approach described above. This number of people (number one through the maximum permitted for each pool) shall be chosen as provisional participants. The provisional participants shall be requested to verify eligibility criteria and diagnosis through evaluation. If any provisional applicant is found ineligible, or for any other reason fails to enter the program, the next alternate based on the sequential numbering shall be selected for enrollment after undergoing verification of eligibility and diagnosis through evaluation.

"Region." A service division of the State created by the Department in accordance with Section 8 of the Department of Mental Health and Developmental Disabilities Act (Ill. Rev. Stat. 1989, ch. 91, par. 100-8, as amended by P.A. 86-1324, effective September 6, 1990).

"Rehabilitation." An effort toward the amelioration of a disability or toward restoring an individual's level of physical, mental, social or economic functioning, independence and self-respect.

"Relative." A person having any of the following relationships by blood, marriage or adoption: parent, son, daughter, brother, sister, grandparent, uncle, aunt, nephew, niece, great grandparent, great uncle, great aunt, stepbrother, stepson, stepdaughter, stepparent or first cousin (Section 2-3 of the Home-Based Support Services Law).

"Service facilitation." Assisting an adult individual participating in the Home-Based Support Program with the development and modification of a service/treatment plan, helping the individual gain access to the services identified in the plan, and advocating on the individual's behalf if services are not being provided as prescribed in the plan or assisting a family participating in the Family Assistance Program in determining the most appropriate use of resources to address the needs of the child with a severe mental disability within the context of the family. Assisting families also includes providing information about local support services, locating, advocating for or creating services that conform to the individual family's desires.

"Parent" or "parent substitute." A person acting in the capacity of a parent with respect to an individual with mental disabilities who is 17 years old or younger. The parent shall be:

The legal guardian, if a legal guardian has been determined;

The natural or adoptive parent, if no legal guardian has been determined;

A person licensed as a foster parent and providing care under the Child Care Act of 1969; or

Another relative who is 21 years old or older who has a parent-like relationship with the individual with mental disabilities and who wishes to serve as the parent substitute. This relative shall be considered the parent for purposes of this Part if there is no objection from:

The individual;

The legal guardian, if a legal guardian has been determined; or

The natural or adoptive parent, if no legal guardian has been determined.

"Primary examiner." The licensed psychologist and/or psychiatrist and/or physician asked to conduct an evaluation to determine whether an individual applying for programs under this Part meets the criteria for severe level of disability.

"Provider agency." (See "Agency.")

"Random selection." To ensure equal opportunity to the programs described in this Part, the Department shall use a random selection process. The selection process shall be implemented in the following manner: children and adults shall be selected separately, based on two programs and two line item appropriations; residents from each region of the State shall be selected in proportion to the population of that region; an equal number of adults with a developmental disability and mental illness shall be selected; and an equal number of children with a developmental disability and an emotional disturbance shall be selected. There shall be four pools within each region: children with an emotional disturbance; children with a developmental

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"Service facilitator." An agency representative with experience in working with mentally disabled persons and who provides service facilitation.

"Service/treatment plan" or "plan." The basis on which services shall be planned by the individual, a service facilitator and other persons chosen by the individual, provided by a service agency, an organization, or an individual and reimbursed by the Department for purposes of the Home-Based Support Services Program.

"Services." Services which are rendered and are partially or wholly funded by the Department.

"Severe autism." A lifelong developmental disability which is typically manifested before 30 months of age and is characterized by disturbances in the rate and sequences of cognitive, affective, psychomotor, language and speech development. A person shall be determined severely autistic, for purposes of this Part, if he or she manifests all of the following characteristics: disturbance in the capacity to relate appropriately to people, events and objects; absence, disorder or delay of language; to speech or meaningful communication; unusual or inconsistent response to sensory stimuli in one or more of the following: sight, hearing, touch, pain, balance, smell, taste, or the way the person holds his or her body; and insistence on sameness as shown by stereotyped or repetitive behavioral patterns, repetitive movements, abnormal preoccupation, or resistance to change. There shall be an absence of the characteristics associated with schizophrenia, such as delusions, hallucinations, loosening of associations and incoherence (Section 2-3 of the Home-Based Support Services Law and Section 3-3 of the Family Assistance Law).

"Severe emotional disturbance." A child with a severe emotional disturbance is one who, on the basis of a psychosis or other emotional or behavioral disorder, suffers from severe disability, which requires sustained treatment interventions for a year or more, and which generally requires attention from two or more agencies.

"Severe mental illness." The manifestation of both the following characteristics: the presence of a major mental disorder in adults, or a mental disorder in children or adolescents, classified in the DSM-III-R, excluding alcohol or substance abuse,

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Alzheimer's disease, or other forms of dementia based upon organic or physical disorders; and a functional disability of an extended duration for adults, or any duration for children or adolescents, which results in substantial limitations in major life activities (Section 2-3 of the Home-Based Support Services Law and Section 3-3 of the Family Assistance Law).

"Severe or profound mental retardation." The manifestation of all of the following characteristics: development at a rate approximately four and one-half or more standard deviations below the mean as determined through intellectual assessment; lack of development primarily in the cognitive domain; and impairment of adaptive behavior. This impairment constitutes a substantial disability and can be expected to continue indefinitely. (Section 2-3 of the Home-Based Support Services Law and Section 3-3 of the Family Assistance Law).

"Severe and multiple impairments." The manifestation of all the following characteristics: multiple handicaps in the physical, sensory, behavioral or cognitive domains which constitute a severe or profound handicap; development at substantially less than expected rate for the age group in the cognitive, affective or psychomotor domains; and a diagnosis of a developmental disability as defined in Section 1-106 of the Code, as now or hereinafter amended. (Section 2-3 of the Home-Based Support Services Law and Section 3-3 of the Family Assistance Law).

"Skills training." Services aimed at improving an individual's ability to perform the activities of daily living and/or community living and/or work-related proficiencies.

"Special education program." Specially designed instruction, at no cost to the parent or individual, to meet the unique needs of an individual with a disability up to age 21, including classroom instruction, instruction in physical education, home instruction and instruction in hospitals and institutions (Education for the Handicapped Act (20 U.S.C.A. 1400 et seq. 1981) and the rules of the State Board of Education at 23 Ill. Adm. Code 226).

"Substantial disability." A physical and mental disability, resulting from mental retardation, cerebral palsy, epilepsy, or autism, of such severity that, alone or in connection with social, legal, or economic constraints, it requires the provision of specialized services over an extended period of time directed toward the individual's social, personal or economic habilitation or rehabilitation.

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"Supported employment." Competitive work in integrated work settings for individuals with severe mental disabilities for whom competitive employment has not traditionally occurred or for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability and who need ongoing support services to perform such work.

"Twenty-four-hour-a-day-supervision." Care by a trained mental health or developmental disability professional on an ongoing basis (Section 2-3 of the Home-Based Support Services Law).

Section 117.125 Individuals' records and informed consent

- a) The individual or guardian shall give informed consent for the release of information and to participate in the services specified in the service/treatment plan, which shall be documented in the individual's case record.
- b) The Department shall maintain a roster of all applicants who have been chosen and have been determined eligible for the programs described in this Part.
- c) The Department shall maintain a permanent case record for each individual who has been chosen and determined eligible. Control and protection of the record shall be governed by the Act.
- d) Department staff shall maintain a continuous, chronological record of all activities and events in the case records. Events and activities shall be documented in a standard format with sufficient specificity that progress can be monitored by an uninformed reviewer without additional information from responsible staff.
- e) Department-designated agencies shall also maintain a case record for each individual served. Control and protection of the records shall be governed by the Act.

Section 117.130 Outreach plan

Annually, information shall be disseminated by the Department in English and in Spanish to individuals who may be eligible for the programs described in this Part, and to persons who have contact with individuals who may be eligible to participate in these programs. Furthermore, all developmental disability and mental health agencies, service facilitation units and other service organizations shall be sent brochures containing preliminary application forms (Section 117.Appendix A) for distribution to

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potentially-eligible individuals. The Department shall disseminate letters explaining the programs to agencies and advocacy organizations around the State.

Section 117.135 Preliminary application process

- a) The Department shall disseminate preliminary applications in English and Spanish annually to those individuals who may be eligible to participate in the programs described in this Part.
- b) Applicants shall submit their completed preliminary applications to the Department, 401 South Spring Street, Springfield, IL 62765 annually by a date determined by the Department, but no later than July 31.
- c) Preliminary application for the Home-Based Support Services Program, described in Subpart B (form DMHDD-1235), must be made by the individual or his or her guardian. Preliminary application for the Family Assistance Program, described in Subpart C (form DMHDD-1236), must be made by the child's parent. The applicant is responsible for providing complete and accurate information as specified in the application package and instructions (see Section 117.Appendix B, Illustrations A and B).
- d) Individuals shall be chosen through a random selection process as described in Section 117.120. The number of individuals chosen to participate in these programs shall be contingent upon the availability of funds appropriated by the General Assembly for these purposes. The Department shall notify individuals in writing of their selection within 30 days after final approval of the application. In each year in which funds are available for expanded enrollment, the Department shall conduct a random selection process and select additional individuals for these programs.

Section 117.140 Application and eligibility determination process

- a) The Department shall send and ask applicants chosen through the random selection process to complete an application package (described in subsection (b) below) within 30 days of being notified that they have been chosen.
- b) The application package shall include:
 - 1) A letter explaining the Department's eligibility verification process;

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- 2) Instructions for submitting the necessary clinical information to verify the severity of the disability and other eligibility criteria;
- 3) A listing of Department-designated agencies in the applicant's region which may assist with verification of disability;
- 4) Written instructions to the primary examiners on what they must do to verify eligibility;
- 5) Eligibility criteria for individuals with severe mental illness or emotional disturbance, severe autism, severe mental retardation and severe and multiple impairments; and
- 6) Eligibility determination forms that must be signed by the primary examiner (see Section 117. Appendix B).

c) Documentation of a severe or profound mental retardation shall be based on a comprehensive documented evaluation by a licensed clinical psychologist or certified school psychologist for children or for adults up to age 21 who are in a special education program. The evaluation shall verify that the individual's severe or profound mental retardation originated before the age of 18 and has resulted in significantly subaverage general intellectual functioning in concurrence with impairment in adaptive behavior and meets the Classification in Mental Retardation (American Association on Mental Retardation, 1983 edition) or the DSM-III-R criteria of severe or profound mental retardation, i.e., an intelligence quotient (I.Q.) of 40 or below, and a severe or profound level of adaptive behavior in keeping with illustrations in the Classification in Mental Retardation.

d) Documentation of a severe mental illness shall be based on a comprehensive documented evaluation by a licensed clinical psychologist or psychiatrist. The evaluation shall verify that the individual's primary diagnosis meets one of the DSM-III-R major mental disorders listed below (such diagnosis may coexist with other DSM-III-R diagnoses in Axis I or other areas): schizophrenic disorder; delusional disorder; schizoaffective disorder; bipolar affective disorder; atypical psychosis; or major depression, recurrent. The evaluation shall also verify that the individual's severe mental illness has substantially affected his or her functioning in at least two of the following areas: self maintenance, social functioning, activities of community living,

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work skills. There shall be detailed documentation of how the individual's functioning in these areas has been specifically affected and documentation that the substantial functional disabilities are expected to be present for at least one year, which results in substantial limitations in major life activities.

e) Documentation of severe autism shall be based on a comprehensive, documented evaluation by a licensed clinical psychologist or psychiatrist. The evaluation shall verify that a child or adult with severe autism has a lifelong developmental disability which is typically manifested before 30 months of age and is characterized by disturbances in the rate and sequences of cognitive, affective, psychomotor, language and speech development. The diagnosis of autistic disorder shall be in keeping with DSM-III-R 299.00 criteria of autistic disorder.

f) Documentation of severe and multiple impairments shall be based on a comprehensive, documented evaluation by a licensed clinical psychologist or a physician; and, depending on the individual's disability, one or more specialists. The evaluation shall verify that the individual has a substantial disability that can be expected to continue indefinitely. The individual meets the criteria for severe and multiple impairments based on a finding that criteria in subsections (1) through (3) below are met. Each item has its own sub-criteria which also shall be met, e.g., under subsections (1)(A) or (B), shall apply.

1) The evaluation determines the presence of a developmental disability based on:

- A) Mental retardation, which is defined as general intellectual functioning that is two or more standard deviations below the mean concurrent with impairment of adaptive behavior which is two or more standard deviations below the mean; or
- B) Cerebral palsy, epilepsy, autism or any other condition which results in impairment similar to that caused by mental retardation and which requires services similar to those required by persons with mental retardation.

2) The evaluation determines multiple handicaps in physical, sensory, behavioral and/or cognitive functioning which constitute a severe or profound impairment attributable to one or more of the following:

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- A) Physical functioning, which severely impairs or restricts the individual's motor performance that may be due to neurological, psychological or physical involvement resulting in a variety of disabling conditions, such as hemiplegia, quadriplegia, ataxia, in severe organ systems involvement such as congenital defects, and other physical abnormalities resulting in the individual being non-mobile and non-ambulatory or confined to bed and receiving assistance in transferring, or requiring regular medical or nursing supervision such as gastrostomy care and feeding.
- B) Sensory, which involves severe restriction due to hearing and/or visual impairment limiting the individual's movement and creating dependence in completing most daily activities.
- i) Hearing impairment is defined, based on an evaluation by a board eligible or certified otolaryngologist or an audiologist with a certificate of clinical competency, as loss of 70 dB aided or speech discrimination of less than 50% aided.
- ii) Visual impairment is defined, based on an evaluation by a board eligible or certified ophthalmologist or a licensed optometrist, as 20/200 in the better eye or a visual field of 20 degrees or less.
- C) Behavioral, which involves severe or profound deficits in adaptive behavior or severe maladaptive behavior.
- i) Adaptive behavior, which is at a severe or profound level of functioning for the age group in self-care skills such as feeding, dressing, grooming or bathing, in social skills such as responses or interactions with others or in communication skills such as use of words or gestures expressively or receptively.
- ii) Maladaptive behavior, which presents a danger to self or others, is destructive to property by deliberately breaking, destroying or defacing objects, is disruptive by fighting or prolonged arguing or crying, or has other socially

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- offensive behaviors in sufficient frequency and/or severity to seriously limit social integration.
- D) Cognitive, which involves severe or profound intellectual functioning at a measured I.Q. of 40 or below.
- 3) The evaluation determines that development is substantially less than expected for the individual's age in cognitive, affective or psychomotor behavior.
- A) Cognitive, which involves intellectual functioning at a measured I.Q. of 70 or below.
- B) Affective behavior, which involves over and under responding to stimuli in the environment and may be observed in mood, attention or awareness, or in behaviors such as euphoria, anger or sadness that seriously limit integration into society.
- C) Psychomotor, which includes a severe developmental delay in fine or gross motor skills so that development in self-care, social interaction, communication or physical activity shall be greatly delayed or restricted.
- g) Individuals or their guardians may use existing evaluations if they meet the criteria above and were completed within the following time frames:
- 1) For assessment of severe mental illness described in subsection (d), within one year prior to the date submitted to the Department.
- 2) For assessment of the maladaptive behavior component of severe and multiple impairment described in subsection (f)(2)(C)(ii), within one year prior to the date submitted to the Department.
- 3) For all other assessments required by subsections (c)(e) and (f), within three years prior to the date submitted to the Department.
- h) If existing evaluations are not available, outdated or do not meet the above criteria, individuals or their guardians shall choose

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the primary examiner of their choice or use Department-designated agencies or organizations to conduct the evaluations. The completed evaluation shall be submitted with forms DMHDD-1237.1, 1237.2, 1237.3, 1237.4, 1237.5 (see Section 117.1 Appendix B, Illustrations A, B, C, D, E).

i) The Department shall reimburse primary examiners and the other necessary examiners for the cost of the evaluation unless the individuals are eligible for partial or full payment for the evaluation by a third party payor. In such cases, the third party payor shall reimburse for the full or partial cost, depending on the individuals' coverage, and the Department shall reimburse the balance. The Department's reimbursement shall be tied to the usual and customary fee for such evaluations, based on the individuals' needs.

j) The primary examiner shall submit the completed application and verification of disability to the Department.

k) The Department shall review the completed application and verification of disability. The Department shall notify the applicant in writing within 30 days that the application has been received and is or is not complete, and shall specify in writing what additional information is necessary.

l) Should an application remain incomplete for more than 30 days after the request for additional information, the Department shall notify the applicant in writing of the incomplete status and what information is still lacking. Such notification of status shall be sent one additional time at a 30-day interval. If, within 30 days after the final notification, the applicant has not provided the additional information, the application shall be considered inactive.

Section 117.145 Hearings and appeals

a) If the Department denies an individual's application for participation in the programs included in this Part, the Department shall give written notice within 30 days to:

- 1) The person who signed the application for participation in the Home-based Support Services Program; or
- 2) The parent for the Family Assistance Program.

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b) The notice shall inform the individual of the right to appeal the decision and shall describe the appeal procedure.

c) The person who receives the notice may appeal the Department's denial within 20 days after receipt of the Department's written notice by mailing a written appeal request of the Department (Sections 2-13 and 3-15 of the Home-Based Support Services Law). All appeal requests shall be sent to:

Office of Legal Counsel, Department of Mental Health and Developmental Disabilities, 402 Stratton Building, Springfield, IL 62765.

d) The Department may arrange pre-hearing conferences prior to scheduling a hearing if, in the opinion of the hearing officer, such conferences could develop factors not included in the Department's master case record, could clarify the facts or issues to be determined at the hearing or could result in a resolution of the case without a formal hearing. The individual is not required to participate in such a conference; if the individual does participate, he or she may be represented by the person of his or her choice. If the appellant and the Department agree, the appeal may be terminated at the pre-hearing conference.

e) The Department shall send by certified mail a notice stating the date, time, and place of the hearing to the address given on the individual's appeal request not later than 60 days after receiving the notice of appeal, unless the appeal is terminated at the pre-hearing conference. Hearings shall be scheduled at a time and place to be determined by the Department. The place selected shall be an appropriate location, with a view to geographic grouping of the cases to be heard, to keep travel at a minimum for all participants.

f) The individual requesting the appeal of the Department shall appear personally and may bring such witnesses as may be deemed necessary and may be represented by a person of his or her own choice.

g) A hearing officer duly authorized by the Director shall conduct the hearing as follows:

- 1) The hearing shall be tape or stenographically recorded.
- 2) The hearing shall be officially opened when its purpose has been stated and governing authorities have been cited.

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10) When there is no further testimony, the hearing shall be adjourned.

h) Within five working days after the hearing, the hearing officer shall render his/her written decision as to whether the Department presented substantial evidence that the individual did not meet the criteria for eligibility set out in Section 117.200 or Section 117.300. Substantial evidence is such evidence as a reasonable person can accept as adequate to support a conclusion. If the hearing officer finds there was substantial evidence to justify the Department's decision, he or she shall deny the appeal. The hearing officer's decision shall contain findings of facts and conclusions. Copies of the decision shall be sent to the appellant and to the Department. The appellant shall be informed that he or she may appeal the hearing officer's decision by requesting a review by the Director within 10 days of the receipt of the appeal. The request must be made in writing to the Director.

i) If an appeal is requested, the Director shall review the hearing officer's decision and the evidence submitted at the hearing. Within 20 working days of receipt of the request for review, the Director shall issue a written decision upholding or reversing the hearing officer's decision. The Director shall uphold the decision if he or she determines that the procedures set out in this section were followed and that the decision was supported by substantial evidence. Copies of the Director's decision shall be sent to the appellant and the Department.

j) The Department's denial of an appeal shall constitute a final administrative decision. Final administrative decisions shall be subject to judicial review exclusively as provided in the Administrative Review Law, as now or hereafter amended, except that any petition for judicial review of a final administrative decision by the Department under this Article shall be filed within 30 days after receipt of notice of the Department's final administrative decision. The term "administrative decision" has the meaning ascribed to it in Section 3-101 of the Code of Civil Procedure, as now or hereafter amended (Section 2-13 of the Home-Based Support Services Law and Section 3-15 of the Family Assistance Law).

SUBPART B: THE HOME-BASED SUPPORT SERVICES PROGRAM

Section 117.200 Eligibility criteria

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3) The hearing officer shall present his or her credentials.

4) The hearing officer shall swear in those who are to testify as witnesses, including the appellant and others appearing on his or her behalf, the Department's representative or representatives, and identify them for the record by name and title.

5) The appellant shall be given preference as to the order of appearances by agreement as to the format of the hearing, as a result of a preliminary conference between both parties. If agreeable, the Department's case shall be recited first into the record for the purpose of developing a basis for the hearing. All documents, in support of such testimony, shall be numbered and offered into evidence as the Department's exhibits. Leave to substitute copies of such documents shall be sought, so the originals may be retained in the Department's master case record file.

6) The common law rules of evidence shall not be enforced in the conduct of the hearing (Section 12 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1989, ch. 127, par. 1012)). The hearing officer may ask and receive answers to such questions as are pertinent and proper for a fair determination of the case. Exhibits may be received as part of the evidence and shall be numbered in order according to whether they are the Department's or the appellant's exhibits.

7) Upon completion of the Department's case, cross-examination of the Department may be held if desired, whether by the appellant or his or her attorney, if so represented.

8) The appellant shall then state, either directly, or on examination by the counsel, the reason for requesting an appeal of the denial of the application, and shall submit documents to substantiate allegations made by him or her, or as a rebuttal of the Department's allegations. These exhibits shall be numbered and identified for record purposes as appellant's exhibits. The presiding hearing officer shall have complete authority for determining what testimony or evidence is relevant and admissible into the record, either by the Department or the appellant.

9) After all direct testimony has been completed and all evidence by both the Department and the appellant is in, cross-examination may again be held, if so desired.

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- a) the names of Department-designated agencies that can assist the individual in developing a service/treatment plan.
- b) The service facilitator shall send a copy of the service/treatment plan, signed by the individual or his or her guardian, to the Department within 60 days from the date of the Department's final approval of the application. Payment for services shall be based on the plan and services delivered shall be consistent with the plan.

- c) If an individual chosen to participate in this program is receiving Department-funded purchase of care or grant-in-aid services, reimbursement for his or her support under this program shall be reduced based on the Department's costs of the individual's purchase of care or grant-in-aid services. The individual can choose, however, to design his or her individualized plan to include newly-arranged services that may better meet the individual's needs and for which there is no offset.

- d) If, based on the evaluations as described in Section 117.140, the individual is found ineligible, the Department shall notify him or her or the guardian in writing within 30 days.

Section 117.210 Notice of ineligibility and right to appeal

- a) Appeal of a service denial may be made as provided for in Section 117.145.
- b) The Department shall purchase services from service agencies, organizations or individuals based on the service/treatment plan. Such services may include, but are not limited to:

- 1) Home health services;
- 2) Service facilitation;
- 3) Crisis management;
- 4) Training and assistance in self-care;
- 5) Personal care services;
- 6) Habilitation and rehabilitation services;

Section 117.205 Notice of eligibility and service authorization

- a) The Department shall notify individuals found eligible, in writing, within 30 days of final approval of their applications. This notification shall include instructions for accessing services and

- 1) Not receive CILA services in conjunction with this Section. (Community-Integrated Living Arrangements Licensure and Certification Act (Ill. Rev. Stat. 1989, ch. 91, par. 1701 et seq.); 59 Ill. Adm. Code 115).

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- 7) Employment-related services;
- 8) Supported employment;
- 9) Respite care for the caregiver; and
- 10) Other skills training that enables an individual to become self-supporting.

b) Home-based support services may not be used to:

- 1) Replace services for which the individual is otherwise eligible through federal, state or local public agencies such as special education programs, as described in 42 CFR 430, Subpart A, 1989.

- 2) Deny, reduce or terminate services to individuals participating in this program.

c) The amount of home-based support services shall be determined by the individual's service/treatment plan but shall not exceed the following:

- 1) For adults who are not in a special education program, the cost of services shall be up to 300 percent of the monthly federal SSI payment for a person living alone (Section 2-6 of the Home-Based Support Services Law).
- 2) For adults who are in a special education program, the cost of services shall be up to 200 percent of the monthly federal SSI payment for a person living alone (Section 2-6 of the Home-Based Support Services Law).

Section 117.220 Service facilitation services

- a) The Department shall notify individuals who are chosen to participate in the program in writing of the availability of an array of community services which Department-designated agencies can provide, including service facilitation.
- b) Periodically, as desired by the individual but no less than annually, the service facilitator shall review with the individual the adequacy of the plan and make any modifications desired by the individual.

Section 117.225 Service/treatment plan

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- a) The service/treatment plan shall be developed by the individual, his or her guardian, and other persons the individual asks to participate as well as a service facilitator.

- b) The plan shall serve as the basis on which services may be billed by an agency, organization or an individual and reimbursed by the Department.

Section 117.230 Selection of services

Individuals whose eligibility has been verified and who have a completed service/treatment plan shall receive services on a monthly basis not to exceed the funding level set by the plan.

Section 117.235 Service monitoring

Annually, the Department through on-site field review shall monitor a sample of the service/treatment plans of participating individuals to assure services are meeting the plans' stated goals, the needs of the individuals being served, and to ensure that the individuals are satisfied with the services which they are receiving.

Section 117.240 Service termination

- a) The funding for services will cease if any of the following occur:

- 1) The adult no longer meets the eligibility criteria;
 - 2) The adult dies;
 - 3) The adult reaches the age of 61 years; or
 - 4) The adult or guardian submits false information during the application process.
- b) Changes in eligibility shall be reported by the individual or his or her guardian to the Department in writing within 30 days after such changes occur.

SUBPART C: FAMILY ASSISTANCE PROGRAM

Section 117.300 Eligibility criteria

- a) The number of eligible families chosen to participate in the Family Assistance Program shall be contingent upon the availability of funds appropriated by the General Assembly for these purposes.

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- b) To be eligible, a family must meet all of the following criteria:
- 1) Have a child 17 years old or younger who has a diagnosis of one of the conditions described in Section 117.200(b)(6) and who lives in the home. The eligible child may be living in an out-of-home placement at the time of application but must live with the parent within 60 days of the date of being notified of acceptance.
 - 2) Reside in Illinois.
 - 3) Have a maximum household federal taxable income of less than \$50,000 annually (natural or adoptive family) as verified by the family's federal income tax return. Income eligibility shall be based on the year immediately preceding the date of application, unless the family can verify that its federal taxable income shall be less in the year the application is made. Families who can verify that they did not file an income tax return because of limited income shall be considered eligible. Such families shall be required to verify household income by listing all of their income from all sources from the previous year. The family income limit shall not apply to children in foster care. In such cases, the foster child's income shall be the determinant.
 - 4) Apply annually.

Section 117.305 Eligibility determination process

The eligibility determination process for the Family Assistance Program shall be conducted as follows:

- a) Documentation of severe or profound mental retardation shall be in accordance with Section 117.140(c).
- b) Documentation of a severe emotional disturbance shall be based on a comprehensive, documented evaluation by a licensed clinical psychologist or psychiatrist who shall verify that the child has a primary diagnosis which meets the DSM-III-R criteria of a mental disorder with onset in childhood or adolescence (excluding V-codes, adjustment disorders, mental retardation when no other mental disorder is present, or other forms of dementia based on organic, physical or alcohol/substance abuse disorders). A child who suffers from this severe disability requires sustained treatment intervention for a year or more and generally requires attention from two or more agencies. The child must meet DSM-III-R Axis V

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criteria of severe functional impairment (a score of 40 or below on the Global Assessment of Functioning Scale (GAF Scale) contained in the DSM-III-R) and must be experiencing significant limitations of major life activities in his or her capacity for living in a family or family equivalent and in two or more of the following areas (not to include impairment in functioning due to physical or environment limitation):

- 1) Self-care at an appropriate developmental level;
 - 2) Perceptive and expressive language;
 - 3) Learning; or
 - 4) Social interaction and self-direction, including behavioral controls, decision-making, judgment and value systems at an appropriate developmental level.
- c) Documentation of severe autism shall be in accordance with Section 117.140(e).
 - d) Documentation of severe and multiple impairments shall be in accordance with Section 117.140(f).
 - e) Families shall submit, with documentation of the child's severe disability, verification of income in accordance with Section 117.300(b)(3).

Section 117.310 Notice of eligibility or ineligibility

The Department shall notify families in writing within 30 days of its final approval or disapproval of the application.

Section 117.315 Right to appeal

Appeal of a service denial may be made as set forth in Section 117.145.

Section 117.320 Services and funding provisions

- a) The family shall use the monthly stipend to assist it in meeting the expenses associated with the child's presence in the family home. The child's parent shall be responsible for determining the stipend's use. Examples of such uses of the stipend include:

- 1) Respite care;

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- 1) The family no longer meets the eligibility criteria;
- 2) The eligible child attains the age of 18;
- 3) The eligible child moves from the family home;
- 4) The parent no longer has custody of the child;
- 5) The family fails to make a report on any of the eligibility standards described in subsections (1) through (4) above as required by Section 117.320;
- 6) The parent does not submit the annual verification statement on the use of the funds to the Department as required by Section 117.320(b);
- 7) The parent submits false information to the Department in an application or a verification statement regarding the stipend's use;
- 8) The eligible child is abused or neglected as reported under the provisions of the Abused and Neglected Child Reporting Act (Ill. Rev. Stat. 1989, ch. 23, pars. 2051 et seq.) and as confirmed by the Department of Children and Family Services; or
- 9) The family uses the monthly stipend for alcohol, illegal drugs, gambling or any illegal activities.

- b) The parent shall report changes in eligibility in writing to the Department within 30 days after such changes occur.
- c) If the family moves, the parent shall report the change of address in writing to the Department within 14 days.

Section 117.335 Right to investigate suspected fraud

The Department reserves the right to investigate suspected fraud of the Family Assistance Program and to take necessary action if such fraud is found.

Section 117.340 Denial of other services

Families participating in this program shall not be denied generic or specialized services available to all families with mentally disabled children because they are receiving a monthly stipend. Department-funded agencies shall not terminate services currently being offered to the eligible child due to

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- 2) Purchase of special equipment and supplies needed by the child;
 - 3) Individual or family counseling;
 - 4) Training for a parent or sibling;
 - 5) Home remodeling to meet the needs of the child; or
 - 6) A special car or a lift for a van to transport the eligible child.
- b) Annually, the parent shall submit to the Department a signed, written statement verifying that the stipend was used to meet the special needs of the family.
 - c) The stipend shall be considered a benefit to the child and shall be paid monthly to the eligible child's parent. The amount shall be equal to the amount of the monthly SSI payment for an individual residing alone.
 - d) If the child is living outside the home, the family may apply for a single, one-time advance payment not to exceed twice the monthly stipend to prepare family members and/or the family home to meet the special needs of the eligible child. The monthly payment as described in subsection (c) above shall begin during the month of the child's return home.

Section 117.325 Service facilitation services

The Department shall inform the family of eligible children in writing of the availability of service facilitation services. When serving families, the service facilitator shall provide information to the family concerning local support services, including but not limited to in-home services, crisis intervention, and respite care and shall advocate for the family in accessing desired services. The service facilitator's role is to assist the family to make its own decisions and choices by providing the family with information needed to better access the service system; to make the family aware of generic services that are available in the community; to assist in advocating for the family's expressed needs and desires; and to work with the family to creatively make suggestions regarding some potential uses of the family assistance dollars.

Section 117.330 Stipend termination

- a) Payment of the stipend shall cease when any of the following occur:

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the family's participation in this program nor shall the agencies introduce a service fee that was not in place prior to the family's participation in this program.

Section 117.345 Maximizing the use of other agency services

A family shall maximize the use of services and entitlements as provided by other governmental agencies such as provider agencies, SSI, SSDI, services of the Department of Rehabilitation Services, and special education services.

Section 117.350 Out-of-home placement

When the Department receives an application for out-of-home placements for children with severe mental disabilities, the Department shall make the parents aware of the availability of the Family Assistance Program. However, no entitlement to this program exists for such children.

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Section 117. Appendix A Preliminary application forms
Illustration A DMHDD-1235, Home-Based Support Services Program Application

DMHDD-1235
08/90
IL462-1128

Illinois Department of Mental Health
and Developmental Disabilities

HOME-BASED SUPPORT SERVICES PROGRAM APPLICATION

A new program for adults with a severe developmental disability or a severe mental illness. For more information call the Department's toll free number 1-800-843-6154.

please read the brochure before completing items 1-10 below, print or type clearly and sign the application:

1. Applicant's name: _____
2. Sex: _____ Male _____ Female
3. Applicant's race: _____ White _____ Black _____ Hispanic _____ Other
4. Applicant is believed to have: _____ severe autism; _____ severe mental illness; _____ severe or profound mental retardation; _____ severe and multiple impairments.
5. Applicant's birthdate: _____ / _____ / _____
6. Applicant's social security number: _____
7. Applicant's address: _____ Street _____

City _____ State _____ Zip _____ County _____

8. Applicant's telephone number: _____ Area code _____ Number _____

9 a. The applicant lives in his/her own home/apartment now: _____ Yes _____ No

b. The applicant lives outside his/her home now but is planning to move to his/her own home/apartment if chosen to participate in this program: _____ Yes _____ No

10. Applicant is enrolled in a special education program: _____ Yes _____ No

I declare that the information above is true and I understand that if I am chosen this information will be confirmed by the Illinois Department of Mental Health and Developmental Disabilities through an assessment to assure my eligibility to participate in the Home-Based Support Services Program.

Applicant's or guardian signature _____ Date _____

Guardian's name _____

Guardian's telephone number: _____

Guardian's address: _____

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Section 117-Appendix A Preliminary application forms
Illustration B DMHDD-1236, Family Assistance Program Application

DMHDD-1236 Illinois Department of Mental Health
08/90 and Developmental Disabilities
IL462-1129

THE FAMILY ASSISTANCE PROGRAM APPLICATION

A new program for families with children who have a severe developmental disability or a severe mental disturbance. For more information call the Department's toll free number 1-800-843-6154.

Please read the brochure before completing items 1-11 below, print or type clearly and sign the application:

1. Child's name: _____
2. Sex: ☐ Male ☐ Female
3. Race: ☐ White ☐ Black ☐ Hispanic ☐ Other
4. I believe my child has: ☐ severe autism; ☐ severe emotional disturbance; ☐ severe or profound mental retardation; ☐ severe and multiple impairments.
5. Child's birthdate: ____/____/____
6. Child's social security number (if available): _____
7. Parent's /guardian's name: _____
Street address: _____
City _____ State _____ Zip _____
8. Parent's/guardian's telephone number: _____ Area code _____ Number _____
9. Family taxable income: _____ under \$50,000 _____ over \$50,000
- 10 a. My child lives in the family home now: ☐ Yes ☐ No
b. My child lives outside the family home now, but if I am chosen to participate in this program I plan to bring my child back into the family home: ☐ Yes ☐ No
11. Is this a foster child: ☐ Yes ☐ No

I declare that the information above is true and I understand that if I am chosen this information will be confirmed by the Illinois Department of Mental Health and Developmental Disabilities through an assessment to assure my eligibility to participate in the Home-Based Support Services Program.

Parent/guardian signature _____ Date _____

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Section 117-Appendix B Eligibility determination forms
Illustration A DMHDD-1237.1, Eligibility Determination - Primary
Examiners - Adults with a Severe Mental Illness

DMHDD-1237.1 Illinois Department of Mental Health
08/90 and Developmental Disabilities
IL462-1130

ELIGIBILITY DETERMINATION - PRIMARY EXAMINERS
- ADULTS WITH A SEVERE MENTAL ILLNESS

Name of applicant: _____

Date of examination: _____

I verify that I am a _____ board eligible/certified psychiatrist
_____ licensed clinical psychologist

and that the above-named individual was evaluated personally by me.

I verify that I have found the person to meet the eligibility criteria
for determination as an **Adult with a Severe Mental Illness**.

I verify that I have found the person does not meet the eligibility
criteria for determination as an **Adult with a Severe Mental Illness**.

I have attached my evaluation and copies of any other evaluations used by me
in making this determination.

Name (type or print) _____

Signature _____

Address _____

License no. _____

Return in self-addressed, stamped envelope or send to:

Department of Mental Health and Developmental Disabilities
Home-Based Support Services Program
Room 405 Stratton Building
Springfield, IL 62765

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Section 117. Appendix B Eligibility determination forms
Illustration B DMHDD-1237.2, Eligibility Determination - Primary
Examiners - Children with Severe Emotional Disturbance

DMHDD-1237.2 Illinois Department of Mental Health
08/90 and Developmental Disabilities
IL462-1131

ELIGIBILITY DETERMINATION - PRIMARY EXAMINERS
- CHILDREN WITH SEVERE EMOTIONAL DISTURBANCE

Name of applicant: _____

Date of examination: _____

I verify that I am a _____ board eligible/certified psychiatrist
_____ licensed clinical psychologist

and that the above-named individual was evaluated personally by me.

_____ I verify that I have found the person to meet the eligibility criteria
for determination as a **Child with a Severe Emotional Disturbance**.

_____ I verify that I have found the person does not meet the eligibility
criteria for determination as a **Child with a Severe Emotional
Disturbance**.

I have attached my evaluation and copies of any other evaluations used by me
in making this determination.

Name (type or print) _____

Signature _____

Address _____

License no. _____

Return in self-addressed, stamped envelope or send to:

Department of Mental Health and Developmental Disabilities
Home-Based Support Services Program
Room 405 Stratton Building
Springfield, IL 62765

DEPARTMENT OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

NOTICE OF ADOPTED RULES

Section 117. Appendix B Eligibility determination forms
Illustration C DMHDD-1237.3, Eligibility Determination - Primary
Examiners - Children and Adults with Severe Autism

DMHDD-1237.3 Illinois Department of Mental Health
08/90 and Developmental Disabilities
IL462-1132

ELIGIBILITY DETERMINATION - PRIMARY EXAMINERS
- CHILDREN AND ADULTS WITH SEVERE AUTISM

Name of applicant: _____

Date of examination: _____

I verify that I am a _____ board eligible/certified psychiatrist
_____ licensed clinical psychologist

and that the above-named individual was evaluated personally by me.

_____ I verify that I have found the person to meet the eligibility criteria
for determination as **Children and Adults with Severe Autism**.

_____ I verify that I have found the person does not meet the eligibility
criteria for determination as **Children and Adults with Severe Autism**.

I have attached my evaluation and copies of any other evaluations used by me
in making this determination.

Name (type or print) _____

Signature _____

Address _____

License no. _____

Return in self-addressed, stamped envelope or send to:

Department of Mental Health and Developmental Disabilities
Home-Based Support Services Program
Room 405 Stratton Building
Springfield, IL 62765

DEPARTMENT OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

DEPARTMENT OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

NOTICE OF ADOPTED RULES

NOTICE OF ADOPTED RULES

Section 117. Appendix B Eligibility determination forms
Illustration E DMHDD-1237.5, Eligibility Determination - Primary
Examiners - Children and Adults with Severe and
Multiple Impairments

Section 117. Appendix B Eligibility determination forms
Illustration D DMHDD-1237.4, Eligibility Determination - Primary
Examiners - Children and Adults with Severe or Profound
Mental Retardation

DMHDD-1237.5 Illinois Department of Mental Health
Rev. 01/91 and Developmental Disabilities
IL462-1134

DMHDD-1237.4 Illinois Department of Mental Health
Rev. 01/91 and Developmental Disabilities
IL462-1133

ELIGIBILITY DETERMINATION - PRIMARY EXAMINERS
- CHILDREN AND ADULTS WITH SEVERE AND MULTIPLE IMPAIRMENTS

ELIGIBILITY DETERMINATION - PRIMARY EXAMINERS
- CHILDREN AND ADULTS WITH SEVERE OR PROFOUND MENTAL RETARDATION

Name of applicant: _____

Date of examination: _____

I verify that I am a _____ board eligible/certified psychiatrist
_____ licensed clinical psychologist
_____ licensed physician

and that the above-named individual was evaluated personally by me.

_____ I verify that I have found the person to meet the eligibility criteria
for determination as **Children and Adults with Severe and Multiple
Impairments.**

_____ I verify that I have found the person does not meet the eligibility
criteria for determination as **Children and Adults with Severe and
Multiple Impairments.**

I have attached my evaluation and copies of any other evaluations used by me
in making this determination.

Name (type or print) _____

Signature _____

Address _____

License no. _____

Return in self-addressed, stamped envelope or send to:

Department of Mental Health and Developmental Disabilities
Home-Based Support Services Program
Room 405 Stratton Building
Springfield, IL 62765

Name of applicant: _____

Date of examination: _____

I verify that I am a _____ licensed clinical psychologist
_____ certified school psychologist

and that the above named individual was evaluated personally by me.

_____ I verify that I have found the person to meet the eligibility criteria
for determination as **Children and Adults with Severe or Profound Mental
Retardation.**

_____ I verify that I have found the person does not meet the eligibility
criteria for determination as **Children and Adults with Severe or
Profound Mental Retardation.**

I have attached my evaluation and copies of any other evaluations used by me
in making this determination.

Name (type or print) _____

Signature _____

Address _____

License no. _____

Return in self-addressed, stamped envelope or send to:

Department of Mental Health and Developmental Disabilities
Home-Based Support Services Program
Room 405 Stratton Building
Springfield, IL 62765

DEPARTMENT OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Services Charges
- 2) Code Citation: 59 Ill. Adm. Code 106
- 3) Section Numbers:
106.25
106.45
Adopted Action:
Amended
Amended
- 4) Statutory Authority: Implementing Ill. Rev. Stat. 1989, ch. 91½, pars. 5-100 et seq. and authorized by Ill. Rev. Stat. 1989, ch. 91½, pars. 5-104 and 100-5, as amended by P.A. 86-1324, effective September 6, 1990.
- 5) Effective Date of Amendments: January 22, 1991
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Do these amendments contain incorporations by reference? No.
- 8) Date Filed in Agency's Principal Office: January 16, 1991.
- 9) Notice(s) of Proposal Published in Illinois Register: September 14, 1990 (14 Ill. Reg. 14674).
- 10) Has JCAR issued a Statement of Objections to these amendments? No.
- 11) Difference(s) between proposal and final version:

The following change was made in response to the Administrative Code Division's suggestions:

All references to the 1987 Illinois Revised Statutes were corrected to cite the 1989 Illinois Revised Statutes in the main source note.

The following changes were made in response to public comment:

There were no changes made.

The Department made the following technical changes:

In the main source note the name of the statute cited in the seventh line was changed to reflect recent legislation and that legislation and its effective date were added to the citation.

DEPARTMENT OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

NOTICE OF ADOPTED AMENDMENTS

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? JCAR did not recommend any changes.
- 13) Will this amendment replace an emergency rule? No.
- 14) Are there any amendments pending on this Part? No.
- 15) Summary and Purpose of Amendments:
Section 106.25 is being amended to allow the Department to credit federal benefits (e.g., Medicaid, Medicare and Veterans' Administration benefits) on a dollar amount. This change will allow the Department to collect enough money to pay for the daily charge and no more.

Section 106.45 is being amended to reflect an amendment to the Illinois Department of Public Aid's rule at 89 Ill. Adm. Code 120.382 which raised the allowable reserve exemption for recipients.
- 16) Information and questions regarding these adopted amendments shall be directed to:

Name: Rules Administrator
Address: 402 Stratton Building
Springfield, IL 62765
Telephone: (217)785-3313

The full text of the Adopted Amendments begins on the next page:

DEPARTMENT OF MENTAL HEALTH AND
DEVELOPMENTAL DISABILITIES

NOTICE OF ADOPTED AMENDMENTS

TITLE 59: MENTAL HEALTH
CHAPTER I: DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES

PART 106
SERVICES CHARGES

Section	Estates of recipients admitted to state hospitals (repealed)
106.10	Definitions
106.15	Maximum charges for treatment (repealed)
106.20	Charges for services
106.25	Liability for treatment charges (repealed)
106.30	Liability for services charges
106.35	Determination of ability to pay treatment charges (repealed)
106.40	Determination of ability to pay services charges
106.45	Standards for ability to pay treatment charges (repealed)
106.50	Allowances for unusual expenses or circumstances in determining ability to pay treatment charges (repealed)
106.60	Allowances for unusual expenses and/or exceptional circumstances in determining ability to pay services charges
106.70	Petition for release from or modification of treatment charges (repealed)
106.75	Petition for release from or modification of services charges
106.80	Computing costs of hospitalization of recipients (repealed)
106.85	Computing monthly costs of recipient services charges
106.90	Partial payment of cost of maintenance for certain mentally retarded persons in licensed private facilities (repealed)
106.100	Partial payment of costs of maintenance for certain mentally ill children in licensed private facilities (repealed)
106.TABLE A	- Responsible Relative Liability

AUTHORITY: Implementing Chapter 5 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1987 1989, ch. 91½, pars. 5-100 et seq.), and Section 11 of the Mental Health and Developmental Disabilities Confidentiality Act (Ill. Rev. Stat. 1987 1989, ch. 91½, par. 811), and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1987 1989, ch. 91½, par. 5-104) and Section 5 of "AN ACT ~~conferring the powers and duties of the Department of Mental Health and Developmental Disabilities~~" Act (Ill. Rev. Stat. 1987 1989, ch. 91½, par. 100-5, as amended by P.A. 86-1324, effective September 6, 1990).

SOURCE: Filed effective October 1, 1969; codified at 5 Ill. Reg. 10721; amended at 6 Ill. Reg. 879, effective January 15, 1982; emergency amendment at

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7 Ill. Reg. 13690, effective October 1, 1983 for a maximum of 150 days; amended at 8 Ill. Reg. 22555, effective November 7, 1984; amended at 11 Ill. Reg. 17197, effective October 9, 1987; amended at 12 Ill. Reg. 10472, effective June 7, 1988; amended at 12 Ill. Reg. 18158, effective October 31, 1988; amended at 13 Ill. Reg. 3821, effective March 14, 1989; amended at 15 Ill. Reg. 1555, effective January 22, 1991.

NOTE: Bold-face type denotes statutory language.

Section 106.25 Charges for services

- a) The maximum charge for services to be assessed against a recipient, or the estate of a recipient in a Department-operated facility, shall be 55% of the average per capita cost commencing January 1, 1985; 65% of the average per capita cost commencing January 1, 1986; 75% of the average per capita cost commencing January 1, 1987; 85% of the average per capita cost commencing January 1, 1988; 95% of the average per capita cost commencing January 1, 1989; and 100% of the average per capita cost commencing January 1, 1990 and each January 1 thereafter to be recalculated annually.
- b) The standard authorized by Section 5-116 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1985 1989, ch. 91½, par. 5-116) by which the Department will set the rate for responsible relatives to provide support will be based on a percentage of annual income, considering the number of dependents. Section 106.106, Table A, found at the end of this Part, is used for determining the support obligation of a responsible relative.

- c) The maximum rate to be used when filing claims for benefits under Title XVIII of the Social Security Act (Medicare) (42 U.S.C.A. 1395b-1, et seq., 1981), Title XIX of the Social Security Act (Medicaid) (42 U.S.C.A. 1396a et seq., 1983) Veteran's Administration benefits (38 U.S.C.A. 521, 541, 542, 1979), Champus/Champus (38 U.S.C.A. 601 et seq., 1981) and active military, is not to exceed the rate set by the Department of Public Aid, or as approved each year for the respective program. Payments received from a benefit or federal insurance program shall be credited for the number of days of specified coverage prescribed by the program involved against on a dollar for dollar basis for each covered day up to the maximum per capita cost for which the recipient has a liability or the contracted rate established by the provider, whichever is less. Responsible relatives cannot be assessed a charge during periods such coverage is received.

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- d) All payments received from private hospitalization insurance shall be credited against the recipient's liability on a day-to-day basis at dollar for dollar basis up to the prevailing maximum charge for recipients as established in this Section.
- e) All payments on behalf of recipients from any source shall be credited against Medicaid (42 U.S.C.A. 1396a et seq., 1983) billings if for the same period of service.
- f) If a spouse who is a legal dependent of a recipient is designated as payee of the recipient's benefits and is using such benefits as his/her income, charges shall be established on the total combined income in accordance with the schedule in Section 106.75(b) as provided for in Section 5-116 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1985 1989, ch. 91, par. 5-116).
- g) Voluntary payments in excess of required amounts will be accepted from the recipient and from responsible relatives as well as from persons not legally responsible.

(Source: Amended at 15 Ill. Reg. 1555, effective January 22, 1991.)
Section 106.45 Determination of ability to pay services charges

- a) The Department, in determining the ability of the responsible person (recipient, responsible relative, guardian, trustee and/or payee) to pay services charges, shall assemble any necessary information pertaining to his/ or her financial status and shall then set the amount for which the responsible person shall be held liable. Recipients and all responsible persons must furnish financial information on admission or as soon thereafter as possible to enable the Department to make a proper determination of the sources available for the cost of services charges. The liability for payment of services charges shall be based on information available at the time of determination. (Such data may include savings, trusts, wills, evidence of indebtedness, evidence of court-ordered payments, and the like.) Each person for whom a determination has been made shall be issued a form DMHDD-612, Notice of Determination, notifying the person of his or her liability. Such notice shall be issued even when current determined liability is \$0.00.
- b) When there is a demonstrated ability to pay, payment for services is an obligation established by Sections 5-100 through 5-117 of the Mental Health and Developmental Disabilities Code against the

DEPARTMENT OF MENTAL HEALTH AND
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NOTICE OF ADOPTED AMENDMENTS

- c) If the responsible person fails to submit financial information as requested, the Department may assess services charges at the maximum rate of charge as provided in Section 106.25 until such information is supplied and an actual assessment can be determined. In the absence of billing during the period covered in such instances, the Department may consider that notices and requests for information as previously sent shall constitute ample notice of liability and indebtedness for such period. However, in subsequent review or annual redetermination involving responsible relatives, no services charges shall be retroactively established prior to the date of contact for financial information.
- d) Subsequent review could be initiated by the recipient of services prior to the annual redetermination due to changes in ability to pay or as a result of an administrative hearing or by the Board of Reimbursement Appeals. Recipients and responsible relatives have a responsibility to inform the Department of any changes.
- e) Liability of responsible relatives shall be reviewed annually and such responsible relatives shall be requested to submit copies of their most recent U.S. Individual Income Tax Return. This information will be used as a basis for determining services charges in accordance with this Part and the schedule of charges in Section 106.75(b).
- f) The determination by the Department of the liability of a responsible person to pay an amount up to the maximum rate as established in Sections 106.25 and 106.25(b) shall continue in force until the Department determines a different amount on the basis of changes in circumstances surrounding the person's ability to pay, or until a change has been made in the standards of ability to pay set forth in Sections 106.25 and 106.25(b) or until a release from or a modification of services charges is granted upon a hearing on the petition of a person liable in accordance with Section 106.75 and Section 5-111 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1987 1989, ch. 91, par. 5-111).
- g) The determination of the ability to pay and amount of liability of the recipient for services charges, up to the prevailing maximum rate established for recipients in Section 106.25, shall be based on all assets and income of the recipient. After considering the recipient's legal dependent's financial needs as covered in Section

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DEPARTMENT OF MENTAL HEALTH AND
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106.45(j), all resources and assets are reduced to the allowable reserve exemption in accordance with Section 106.45(h).

- h) The allowable reserve exemption, as provided for in Section 5-106 of the Mental Health and Developmental Disabilities Code (Ill. Rev. Stat. 1989, ch. 91, par. 5-106), is determined by the amount of assets owned at the time of the recipient's admission except that the allowable reserve exemption from all sources cannot exceed \$1,500.00 that established by the Illinois Department of Public Aid at 89 Ill. Adm. Code 120.382. The recipient's allowable reserve exemption can only be increased by the unused portions of the monthly \$40.00 personal and clothing allowance or unspent workshop or other monetary incentive funds, such as living skills program funds. Payments to be paid by the recipient for services charges may not be deferred to build a maximum of \$1,500.00 reserve up to the maximum amount allowed.

- i) If the recipient becomes eligible and is approved for Medicaid (42 U.S.C.A. 1396a et seq., 1983), 42 CFR 430 et seq., 1982 and Illinois Department of Public Aid rules (89 Ill. Adm. Code 120.40 and 120.382) govern the allowable reserve and personal and clothing allowance.

- j) Prior to the assessment of services charges against a recipient of services, the Department shall review the financial needs of the recipient's legal dependents. The financial needs of these legal dependents shall be based on amounts expended up to an amount equal to the minimum yearly income for which a responsible relative would be subject to a charge as shown in Section 106. Table A. Any amounts as allowed which are not expended for support of legal dependents claimed on the recipient's U.S. Individual Income Tax Return, shall be subject to services charges.

- k) When it is necessary for the Department to disclose information in order to collect services charges, such disclosure shall be limited to information needed to pursue collection, and the information so disclosed shall not be used for any other purpose nor shall it be redisclosed except in connection with such collection activities (Section 11 of the Mental Health and Developmental Disabilities Confidentiality Act, Ill. Rev. Stat. 1987 1989, ch. 91, par. 811.)

(Source: Amended at 15 Ill. Reg. 1555, effective January 22, 1991)

ILLINOIS REGISTER

1562
91

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Primary Drinking Water Standards

- 2) Code Citation: 35 Ill. Adm. Code 611

- 3) Section Numbers:
611.325, 611.521
Adopted Action:
Amendments

- 4) Statutory Authority: Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1017, 1017.5 and 1027.

- 5) Effective Date of Amendments: January 22, 1991

- 6) Does this rulemaking contain an automatic repeal date? No.

- 7) Does this Amendment contain incorporations by reference? No.

- 8) Date filed in Board's Principal Office: Order adopted December 20, 1990.

- 9) Notice of Proposal Published in Illinois Register:

October 19, 1990; 14 Ill. Reg. 17154

- 10) Has JCAR issued a Statement of Objections to these rules? No.

Section 22.4(a) of the Environmental Protection Act (Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1022.4(a)) provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

- 11) Differences between proposal and final version: None.

- 12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreement letter issued by JCAR?

Section 22.4(a) of the Environmental Protection Act provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

- 13) Will this Amendment replace an emergency Amendment currently in effect?
No.

- 14) Are there any other amendments pending on this Part? No.

- 15) Summary and Purpose of Amendment:

POLLUTION CONTROL BOARD

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

NOTICE OF ADOPTED AMENDMENTS

A complete description is contained in the Board's Opinion of December 20, 1990, in R90-13, which Opinion is available from the address below. Section 17.5 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1017.5) provides that Section 5 of the Administrative Procedure Act shall not apply. Because this rulemaking is not subject to Section 5 of the APA, it is not subject to first notice or to second notice review by JCAR.

This Docket updates the SDWA rules to correspond with USEPA amendments adopted during the period January 1 through June 30, 1990. The only action was at 55 Fed. Reg. 25064, June 19, 1990. This was a correction to USEPA disinfection and filtration rules adopted on June 29, 1989. The Board detected and corrected most of these errors in the original adoption of the SDWA rules in R88-26 (14 Ill. Reg. 16517, effective September 20, 1990). Only two Sections require correction.

The amendment to Section 611.325 changes the BAT for the revised microbiological MCL's to "compliance" with an approved wellhead protection program, recognizing that it is the State which develops the program. The amendment to Section 611.521 limits a special sampling provisions to supplies using "only" groundwater.

16) Information and questions regarding this adopted amendment shall be directed to:

Morton F. Dorothy
Scientific/Technical Section
Illinois Pollution Control Board
104 W. University
Urbana, IL 61801
217/ 333-5575

The full text of the Adopted Amendment begins on the next page:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE F: PUBLIC WATER SUPPLIES
CHAPTER I: POLLUTION CONTROL BOARD

PART 611
PRIMARY DRINKING WATER STANDARDS

SUBPART A: GENERAL

Section
611.100 Purpose, Scope and Applicability
611.101 Definitions
611.102 Incorporations by Reference
611.103 Severability
611.108 Delegation to Local Government
611.109 Enforcement
611.110 Special Exception Permits
611.111 Section 1415 Variances
611.112 Section 1416 Variances
611.113 Alternative Treatment Techniques
611.114 Siting requirements
611.115 Source Water Quality
611.120 Effective dates
611.121 Maximum Contaminant Levels
611.125 Fluoridation Requirement
611.126 Prohibition on Use of Lead

SUBPART B: FILTRATION AND DISINFECTION

Section
611.201 Requiring a Demonstration
611.202 Procedures for Agency Determinations
611.211 Filtration Required
611.212 Groundwater under Direct Influence of Surface Water
611.213 No Method of HPC Analysis
611.220 General Requirements
611.230 Filtration Effective Dates
611.231 Source Water Quality Conditions
611.232 Site-Specific Conditions
611.233 Treatment Technique Violations
611.240 Disinfection
611.241 Unfiltered PWSS
611.242 Filtered PWSS
611.250 Filtration
611.261 Unfiltered PWSS: Reporting and Recordkeeping
611.262 Filtered PWSS: Reporting and Recordkeeping
611.271 Protection during Repair Work
611.272 Disinfection following Repair

SUBPART C: USE OF NON-CENTRALIZED TREATMENT DEVICES

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- Section
611.280 Point-of-Entry Devices
611.290 Use of other Non-centralized Treatment Devices
- SUBPART F: MAXIMUM CONTAMINANT LEVELS (MCL's)

- Section
611.300 Inorganic Chemicals
611.310 Organic Chemicals
611.311 VOCs
611.320 Turbidity
611.325 Microbiological Contaminants
611.330 Radium and Gross Alpha Particle Activity
611.331 Beta Particle and Photon Radioactivity

SUBPART K: GENERAL MONITORING AND ANALYTICAL REQUIREMENTS

- Section
611.480 Alternative Analytical Techniques
611.490 Certified Laboratories
611.491 Laboratory Testing Equipment
611.500 Consecutive PWSS

SUBPART L: MICROBIOLOGICAL MONITORING AND ANALYTICAL REQUIREMENTS

- Section
611.521 Routine Coliform Monitoring
611.522 Repeat Coliform Monitoring
611.523 Invalidation of Total Coliform Samples
611.524 Sanitary Surveys
611.525 Fecal Coliform and E. Coli Testing
611.526 Analytical Methodology
611.527 Response to Violation
611.531 Analytical Requirements
611.532 Unfiltered PWSS
611.533 Filtered PWSS

SUBPART M: TURBIDITY MONITORING AND ANALYTICAL REQUIREMENTS

- Section
611.560 Turbidity

SUBPART N: INORGANIC MONITORING AND ANALYTICAL REQUIREMENTS

- Section
611.601 Requirements
611.602 Violation of State MCL
611.603 Frequency of State Monitoring
611.606 Analytical Methods
611.607 Fluoride Monitoring
611.610 Special Monitoring for Sodium

SUBPART O: ORGANIC MONITORING AND ANALYTICAL REQUIREMENTS

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- Section
611.641 Sampling and Analytical Requirements
611.645 Analytical Methods
611.648 Sampling for VOCs
611.650 Monitoring for 36 Contaminants
611.657 Analytical Methods for 36 Contaminants

SUBPART P: THM MONITORING AND ANALYTICAL REQUIREMENTS

- Section
611.680 Sampling, Analytical and other Requirements
611.683 Reduced Monitoring Frequency
611.684 Averaging
611.685 Analytical Methods
611.686 Modification to System

SUBPART Q: RADIOLOGICAL MONITORING AND ANALYTICAL REQUIREMENTS

- Section
611.720 Analytical Methods
611.731 Gross Alpha
611.732 Manmade Radioactivity

SUBPART T: REPORTING, PUBLIC NOTIFICATION AND RECORDKEEPING

- Section
611.830 Applicability
611.831 Monthly Operating Report
611.832 Notice by Agency
611.833 Cross Connection Reporting
611.840 Reporting
611.851 Reporting MCL and other Violations
611.852 Reporting other Violations
611.853 Notice to New Billing Units
611.854 General Content of Public Notice
611.855 Mandatory Health Effects Language
611.856 Fluoride Notice
611.858 Fluoride Secondary Standard
611.860 Record Maintenance
611.870 List of 36 Contaminants

- Appendix A Mandatory Health Effects Information
Appendix B Percent Inactivation of G. Lamblia Cysts
Appendix C Common Names of Organic Chemicals
Table A Total Coliform Monitoring Frequency
Table B Fecal or Total Coliform Density Measurements
Table C Frequency of RDC Measurement

AUTHORITY: Implementing Sections 17 and 17.5 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1017, 1017.5 and 1027.

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Subpart B, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide or ozone; or

- 5) The development and implementation of an approved-for systems using groundwater, compliance with the wellhead protection program, after USEPA approves the program.

BOARD NOTE: Derived from 40 CFR 141.63 (1989), as amended at 54 Fed. Reg. 27562, June 29, 1989.

(Source: Amended at 15 Ill. Reg. 1562, effective Jan. 22, 1991)

SUBPART L: MICROBIOLOGICAL MONITORING AND ANALYTICAL REQUIREMENTS

Section 611.521 Routine Coliform Monitoring

- a) Suppliers shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan, which must be approved by special exception permit.
- b) The monitoring frequency for total coliforms for CWSs is based on the population served by the CWS, as set forth in Table A. If a CWS serving 25 to 1,000 persons has no history of total coliform contamination in its current configuration and a sanitary survey conducted in the past five years shows that the CWS is supplied solely by a protected groundwater source and is free of sanitary defects, the Agency shall reduce the monitoring frequency specified in Table A, except that in no case shall the Agency reduce the monitoring frequency to less than one sample per quarter. The Agency shall approve the reduced monitoring frequency by special exception permit.

- c) The monitoring frequency for total coliforms for non-CWSs is as follows:

- 1) A non-CWS using only groundwater (except groundwater under the direct influence of surface water, as determined in Section 611.212) and serving 1,000 persons or fewer shall monitor each calendar quarter that the system provides water to the public, except that Public Health shall reduce this monitoring frequency if a sanitary survey shows that the system is free of sanitary defects. Beginning June 29, 1994, Public Health cannot reduce the monitoring frequency for a non-CWS using only groundwater (except groundwater under the direct influence of surface water) and serving 1,000 persons or fewer to less than once per year.
- 2) A non-CWS using only groundwater (except groundwater under the

POLLUTION CONTROL BOARD

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SOURCE: Adopted in R88-26 at 14 Ill. Reg. 16517, effective September 20, 1990; amended in R90-21 at 14 Ill. Reg. 20448, effective December 11, 1990; amended in R90-13 at 15 Ill. Reg. 1562, effective January 22, 1991

SUBPART F: MAXIMUM CONTAMINANT LEVELS (MCL'S)

Section 611.325 Microbiological Contaminants

- a) The MCL is based on the presence or absence of total coliforms in a sample, rather than coliform density.

- 1) For a supplier which collects at least 40 samples per month, if no more than 5.0 percent of the samples collected during a month are total coliform-positive, the supplier is in compliance with the MCL for total coliforms.

- 2) For a supplier which collects fewer than 40 samples per month, if no more than one sample collected during a month is total coliform-positive, the supplier is in compliance with the MCL for total coliforms.

- b) Any fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample, constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in Section 611.851 et seq., this is a violation that may pose an acute risk to health.

- c) A supplier shall determine compliance with the MCL for total coliforms in subsections (a) and (b) for each month in which it is required to monitor for total coliforms.

- d) BATs for achieving compliance with the MCL for total coliforms in subsections (a) and (b):

- 1) Protection of wells from contamination by coliforms by appropriate placement and construction;
- 2) Maintenance of RDC throughout the distribution system;
- 3) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs and continual maintenance of positive water pressure in all parts of the distribution system;
- 4) Filtration and disinfection of surface water, as described in

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

direct influence of surface water) and serving more than 1,000 persons during any month shall monitor at the same frequency as a like-sized CWS, as specified in subsection (b), except Public Health shall reduce this monitoring frequency for any month the system serves 1,000 persons or fewer. Public Health cannot reduce the monitoring to less than once per year. For systems using groundwater under the direct influence of surface water, subsection (c)(4) applies.

3) A non-CWS using surface water, in total or in part, shall monitor at the same frequency as a like-sized CWS, as specified in subsection (b), regardless of the number of persons it serves.

4) A non-CWS using groundwater under the direct influence of surface water, shall monitor at the same frequency as a like-sized CWS, as specified in subsection (b). The supplier shall begin monitoring at this frequency beginning six months after Public Health determines that the groundwater is under the direct influence of surface water.

d) The supplier shall collect samples at regular time intervals throughout the month, except that a supplier which uses only groundwater (except groundwater under the direct influence of surface water) and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

e) A PWS that uses surface water or groundwater under the direct influence of surface water, and does not practice filtration in compliance with Subpart B, shall collect at least one sample near the first service connection each day the turbidity level of the source water, measured as specified in Section 611.532(b), exceeds 1 NTU. This sample must be analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1 NTU, the supplier shall collect this coliform sample within 24 hours of the first exceedance, unless the Agency has determined, by special exception permit, that the supplier, for logistical reasons outside the supplier's control, cannot have the sample analyzed within 30 hours of collection. Sample results from this coliform monitoring must be included in determining compliance with the MCL for total coliforms in Section 611.325.

f) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement or repair, must not be used to determine compliance with the MCL for total coliforms in Section 611.325.

BOARD NOTE: Derived from 40 CFR 141.21(a) (1989), as amended at 54

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

Fed. Reg. 27562, June 29, 1989.

(Source: Amended at 15 Ill. Reg. 1562, effective Jan. 22, 1991)

STATE EMPLOYEES RETIREMENT SYSTEM OF ILLINOIS

NOTICE OF ADOPTED AMENDMENTS

1) The Heading of the Part: Public Information, Rulemaking and Organization

2) Code Citation: 2 Ill. Adm. Code 2375

3) Section numbers: Adopted Action:

Amendment

2375.110

4) Statutory Authority: Ill. Rev. Stat. 1989, Ch. 108 1/2, par. 14-135.03

5) Effective Date of Rule(s): January 22, 1991

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: January 15, 1991

9) Notice of Proposal Published in Illinois Register: N.A.

10) Has JCAR issued a Statement of Objections to this amendment? N.A.

11) Difference(s) between proposal and final version: N.A.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? N.A.

13) Will this amendment replace an emergency rule currently in effect? No

14) Are there any amendments pending on the Part? No

15) Summary and Purpose of Amendment: This amendment updates the rules to reflect our current address.

16) Information and questions regarding this adopted amendment shall be directed to:

Name: Michael L. Mory, Executive Secretary
Address: State Employees' Retirement System of Illinois,
2101 South Veterans Parkway, P.O. Box 19255,
Springfield, IL 62794-9255
Telephone: 217-785-7444

The full text of the Adopted Amendment begins on the next page:

STATE EMPLOYEES' RETIREMENT SYSTEM

NOTICE OF ADOPTED AMENDMENT(S)

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE E: MISCELLANEOUS STATE AGENCIES
CHAPTER XXXVI: STATE EMPLOYEES' RETIREMENT SYSTEM

PART 2375

PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION

SUBPART A: PUBLIC INFORMATION

Section
2375.10 Availability for Public Inspection

SUBPART B: RULEMAKING

Section
2375.110

Procedure for Submission, Consideration and Disposition of Petitions Seeking the Promulgation, Amendment or Repeal of the Rules of the State Employees Retirement System

SUBPART C: ORGANIZATION

Section
2375.210 Organization of the State Employees' Retirement System

AUTHORITY: Implementing Section 4.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1983, ch. 127, par. 1004.01) and authorized by Sections 14-135.03 and 14-134 of the Illinois Pension Code (Ill. Rev. Stat. 1983, ch. 108 1/2, par. 14-135.03 and Ill. Rev. Stat. 1985 Supp. ch. 108 1/2, par. 14-134 as amended by P.A. 84-1028, effective November 18, 1985).

SOURCE: Filed December 20, 1977, effective December 31, 1977; amended at 4 Ill. Reg. 12, p. 534, effective March 11, 1980; codified at 6 Ill. Reg. 10935; amended at 8 Ill. Reg. 4144, effective March 26, 1984; recodified from 80 Ill. Adm. Code 1540.280, 1540.290 and 1540.300 at 8 Ill. Reg. 15902; amended at 9 Ill. Reg. 12714, effective August 2, 1985; amended at 10 Ill. Reg. 1916, effective January 10, 1986; amended at 15 Ill. Reg. 1571, effective January 22, 1991.

SUBPART B: RULEMAKING

Section 2375.110 Procedure for Submission, Consideration and Disposition of Petitions Seeking the Promulgation, Amendment or Repeal of the Rules of the State Employees Retirement System

a) Right to Petition

Any interested person may petition the Executive Secretary requesting the promulgation of a Rule or Regulation or for an amendment, modification, revision or repeal of any existing rule.

b) Form of Petition

DEPARTMENT OF AGRICULTURE
NOTICE OF WITHDRAWAL OF PEREMPTORY AMENDMENTS

1) The Heading of the Part: Meat and Poultry Inspection Act
2) Code Citation: 8 Ill. Adm. Code 125

Section Numbers:	Proposed Action:	Section Numbers:	Proposed Action:
125.10	Amend	125.230	Amend
125.30	Amend	125.240	Amend
125.40	Amend	125.250	Amend
125.50	Amend	125.260	Amend
125.60	Amend	125.270	Amend
125.80	Amend	125.280	Amend
125.90	Amend	125.290	Amend
125.100	Amend	125.300	Amend
125.110	Amend	125.305	Amend
125.120	Amend	125.310	Amend
125.130	Amend	125.320	Amend
125.140	Amend	125.330	Amend
125.150	Amend	125.340	Amend
125.160	Amend	125.350	Amend
125.170	Amend	125.360	Amend
125.180	Amend	125.370	Amend
125.190	Amend	125.380	Amend
125.200	Amend	125.390	Amend
125.210	Amend	125.400	Amend
125.220	Amend	125.410	Amend

4) Date Notice of Peremptory Amendments Published in the Illinois Register:

January 18, 1991, 15 Ill. Reg. 620

5) Reason for the Withdrawal:

These amendments to the Meat and Poultry Inspection rules were inappropriately submitted as peremptory amendments. They are being withdrawn and are being resubmitted as proposed amendments.

STATE EMPLOYEES' RETIREMENT SYSTEM

NOTICE OF ADOPTED AMENDMENT(S)

The Petition shall be in writing and signed by the party requesting the promulgation, amendment, modification, revision or repeal of any of the rules of the State Employees Retirement System. The Petition should set forth the following information:

- 1) A statement of whether the promulgation of a new Rule or the amendment, modification, revision or repeal of a present Rule is being sought, and
- 2) If a Petition requests the promulgation of a new Rule, the Petition shall set forth the full text of the suggested new Rule, and
- 3) If the Petition requests the amendment, revision or modification of an existing Section, the Petition shall identify the existing Section as to which amendment, revision or modification is being requested and should set forth the full text of the Rule as amended, revised or modified, and
- 4) If the Petition requests the repeal of an existing Section the Petition shall identify the particular Section as to which repeal is being requested, and
- 5) A statement of the Petitioner's reasons for requesting the promulgation, amendment, revision, modification or repeal as the case may be.

c) Filing of Petition.

Such Petition may be filed in person or by mail with the Executive Secretary of the State Employees' Retirement System at the Springfield Office, P.O. Box 4664---2845-West-Washington-Street 19255-2101, South Veterans Parkway, Springfield, IL 62708 794-9255.

d) Disposition of Petition.

The Executive Secretary will present the Petition to the Board of Trustees at its next regularly scheduled meeting following receipt of the Petition. Within 30 days after said meeting, the Executive Secretary will notify the Petitioner whether the board will grant the Petition and initiate Rule making proceedings in accordance with Section 5 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1005).

(Source: Amended at 15 Ill. Reg. 1571, effective January 22, 1991.)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION

STATEMENT OF OBJECTION

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS
(Continued Page 2)

Heading of Part:

Residential Energy Assistance Partnership Program

Code Citation:

47 Ill. Adm. Code 100

Section Numbers:

100.111
100.113

Date Originally Published in Illinois Register:

September 21, 1990
14 Ill. Reg. 15189

At its meeting on January 9, 1991, the Joint Committee on Administrative Rules objected to the above proposed rulemaking. Failure of the agency to respond within 90 days of receipt of the Statement of Objection shall constitute withdrawal of the proposed rulemaking in its entirety.

The specific objections are as follows:

Objection 1

The Joint Committee objects to Sections 100.111(a)(7) and 100.113(a)(8) of the Department of Commerce and Community Affairs' rules entitled "Residential Energy Assistance Partnership Program" (47 Ill. Adm. Code 100), because by failing to include a time limit beyond which a person cannot be reinstated once they have been dropped from the REAPP program, the rules are incomplete.

The Department of Commerce and Community Affairs has proposed amendments to Sections 100.111(a)(7) and 100.113(a)(8) which establish the default provisions for AFDC recipients and non-AFDC recipients respectively. These provisions allow reinstatement for program assistance two times in any program year, or once, if disconnected, if the recipients pay all amounts due under the option in which they are participating. No provisions have been made, however, to establish an outside limit beyond which a recipient in default can be reinstated to REAPP. If the recipient is considered a new enrollee rather than a reinstated recipient, the program will not reimburse vendors retroactively to the date the recipient became ineligible for the program.

The Peoples Gas Light and Coke Company of Chicago provided public comment that noted that the Department has not established a time limit as to how long a recipient can be dropped from the program and then be reinstated. The commentor was particularly concerned about how a utility could make a timely request for reimbursement under Sections 100.111(c)(2) and 100.113(c)(2), if such requests were to be made for

services from a prior winter season. Sections 100.111(d)(3) and 100.113(d)(3), which require that utilities and energy vendors submit an independent audit to the Department, would have to be altered if retroactive reinstatements to prior winter seasons are allowed. The commentor notes that "[s]uch reinstatements would require the alteration of previously audited balances of shortfalls incurred and credits extended under the program."

The Department was asked to indicate the specific problems with the proposed rule, its reaction to the commentor, outline any corrective action, and establish a timetable for any additional rulemaking. The Department responded that it is aware that the rules do not contain limitations on retroactive reinstatement for persons dropped from REAPP, but that the issue requires advice from its Advisory Committee. Noting that the Department has obligated itself to a five-year commitment to those persons on REAPP, issues of when a deadline should be established are further complicated. The lack of Advisory Committee consensus, the need for further discussion, and the fact that the Department is paying 1989 bills, all indicate that a decision concerning this deadline could be postponed until later. The Department noted that this is only the second year that REAPP is operating, so reinstatement back to the 1989 year is not an issue as of yet. While no timetable for further rulemaking could be projected, the Department anticipated ongoing discussions have been and will be occurring.

However, the emerging issues and lack of resolution have the potential to negatively impact utilities, home energy vendors, and recipients. Sections 100.111 and 100.113 require home energy vendors to make timely requests for reimbursement and to prepare final audited balances. If no retroactive deadlines for REAPP reinstatement are established by rule, the vendors cannot accurately determine pre-program arrearage amounts and shortfalls. In addition, certification of a previous REAPP recipient cannot occur on a consistent basis. Deferring the policy considerations until a later date will only produce further complications. If a recipient drops off of the program today, the recipient and the vendor or utility would not know whether the recipient will be allowed to be reinstated onto the program in one month or in one year. The failure to include this time limit within the rulemaking renders the persons and entities regulated uninformed.

Therefore, the Joint Committee objects to Sections 100.111(a)(7) and 100.113(a)(8) of the Department of Commerce and Community Affairs' rules entitled "Residential Energy Assistance Partnership Program" (47 Ill. Adm. Code 100), because the rules are incomplete by failing to

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF OBJECTIONDEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS
(Continued Page 3)

include a time limit beyond which a person cannot be reinstated once they have been dropped from the REAPP program, the rules are incomplete.

Objection 2

The Joint Committee objects to Sections 100.111(c)(2)(A) and 100.111(c)(2)(B) of the Department of Commerce and Community Affairs' rules entitled "Residential Energy Assistance Partnership Program" (47 Ill. Adm. Code 100), because by failing to prescribe the verification and certification procedures for AFDC recipient participants in the REAPP program, the rules are incomplete.

The Department of Commerce and Community Affairs has proposed amendments to Sections 100.111(c)(2)(A) and 100.111(c)(2)(B) which establish payment process for AFDC recipient customers. These sections are being amended to provide that the Illinois Department of Public Aid, rather than the Department of Commerce and Community Affairs, directly compensate vendors for AFDC participants in the REAPP program. No provision has been made, however, to establish eligibility verification and certification by the Department of Public Aid or to provide for coordinated administration of the process by the Department of Public Aid and the Department of Commerce and Community Affairs.

During the public comment period, the Iowa-Illinois Gas and Electric Company and the Central Illinois Public Service Company requested that the Department add new language to these sections that reflects how the payment mechanism in the AFDC payment structure is verified and operated. In response, the Department stated that there have been difficulties in the past with the payment structure and that "the computerized client tracking and payment system has now been coordinated with direct verification from the Illinois Department of Public Aid."

Discussions with the Department representatives revealed that the Department was negotiating an interagency agreement concerning such issues with the Illinois Department of Public Aid. The Department explained that during the last year and prior to the new system, instances occurred where the Department approved eligibility, but eligibility was subsequently denied by the Illinois Department of Public Aid.

The Department provided the Joint Committee with a copy of the unexecuted draft interagency agreement negotiated by the Department

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF OBJECTIONDEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS
(Continued Page 4)

and the Illinois Department of Public Aid that explains the new verification of eligibility system. The agreement requires that the Department submit to the Illinois Department of Public Aid vendor billing information and that the Illinois Department of Public Aid check and verify the eligibility of the customers. The Illinois Department of Public Aid creates a computerized data file that contains all billing records that have been verified as AFDC eligible customers and all billing records that the Illinois Department of Public Aid has been unable to verify. The Illinois Department of Public Aid transmits a computerized magnetic tape to the Department, which contains information as to whether the customer has been verified as eligible by the Illinois Department of Public Aid. The Illinois Department of Public Aid then certifies customer eligibility.

According to the Illinois Supreme Court in *Senn Park Nursing Center v. Miller* (83 Ill. Dec. 609, 1984) and the recent county circuit court decision in *Illinois Health Care Associates v. Kustra*, Docket No. 89 Ch. 1243, the verification and certification process outlined in the draft interagency agreement amounts to policy not promulgated through rules. In order to render the rulemaking complete, the Department must provide for a complete verification and certification process within its rulemaking.

Section 7.05 of the Illinois Administrative Procedure Act states that "[t]he Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee determines that the agency's rules are incomplete, inconsistent, or otherwise deficient." Although the Department is now willing to include verification and certification procedures within its rulemaking, the new substantive language would violate Section 5.01 of the Illinois Administrative Procedure Act, since public notice and comment would be eliminated.

Therefore, the Joint Committee objects to Sections 100.111(c)(2)(A) and 100.111(c)(2)(B) of the Department of Commerce and Community Affairs' rules entitled "Residential Energy Assistance Partnership Program" (47 Ill. Adm. Code 100), because by failing to prescribe the verification and certification procedures for AFDC recipient participants in the REAPP program, the rules are incomplete.

88615189

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the week of January 14, 1991 through January 18, 1991, and have been scheduled for review by the Committee at its February 21, 1991 meeting. Other items not contained in this published list may also be considered by the Joint Committee at its February meeting. Members of the public wishing to express their views with respect to a proposed rule should submit written comments to the Joint Committee at the following address: Joint Committee on Administrative Rules, 509 South Sixth Street, Room 500, Springfield, IL 62701.

Second Notice Expires	Agency and Rule	Start of First Notice	Scheduled for Consideration by JCAR
3/1/91	Illinois Community College Board, Administration of the Illinois Public Community College Act (23 Ill. Adm. Code 1501)	11/30/90 14 Ill. Reg. 18890	February 21, 1991
3/1/91	Office of the Comptroller, Public Radio and Television Station Grants (74 Ill. Adm. Code 280)	11/16/90 14 Ill. Reg. 18359	February 21, 1991
3/1/91	Department of Public Aid, Practice in Administrative Hearings (89 Ill. Adm. Code 104)	11/26/90 14 Ill. Reg. 18705	February 21, 1991
3/1/91	Department of Public Aid, Medical Payment (89 Ill. Adm. Code 140)	11/30/90 14 Ill. Reg. 18982	February 21, 1991
3/4/91	Department of Conservation, Sport Fishing Regulations for the Waters of Illinois (17 Ill. Adm. Code 810)	11/30/90 14 Ill. Reg. 18905	February 21, 1991
3/4/91	Department of Professional Regulation, Land Surveyors Act (68 Ill. Adm. Code 1270)	5/18/90 14 Ill. Reg. 7378	February 21, 1991

PROCLAMATION

91-007

AFRICAN-AMERICAN HISTORY MONTH

Whereas, observance of African-American History Month was initiated in 1926 by Carter G. Woodson, who is known as the "Father of African-American History"; and

Whereas, African-American History Month pays respect to the heritage of African-American people, and promotes increased respect for law and order and a greater understanding of the functioning of religious institutions; and

Whereas, the theme of this year's observance is "The Father of Black History: Carter G. Woodson, A Living Legacy"; and

Whereas, the observance of African-American History Month across America during February 1991 will provide an opportunity to assess the progress that has been made in the United States in leadership activities among African-Americans;

Therefore, I, James R. Thompson, Governor of the State of Illinois, proclaim February 1991 as AFRICAN-AMERICAN HISTORY MONTH in the State of Illinois and urge Illinoisans to pay tribute to the heritage of African-American people.

Issued by the Governor January 11, 1991.

Filed with the Secretary of State January 22, 1991.

91-008

CARDIAC REHABILITATION WEEK

Whereas, cardiovascular diseases continue to be the number one cause of death in our nation today; and

Whereas, medical research supports the premise that cardiovascular disease mortality can be decreased by reducing cardiovascular disease risk factors through regular exercise, blood pressure control, cholesterol reduction, smoking cessation, and stress management; and

Whereas, cardiac rehabilitation provides an opportunity for cardiac patients to return to optimal physical, psychological, social, and occupational health through supervised exercise and cardiovascular disease risk factor education and modification; and

Whereas, there are more than 100 organized cardiac rehabilitation programs in the State of Illinois. The American Association of Cardiovascular and Pulmonary Rehabilitation and the Illinois Society for Cardiac Health and Rehabilitation are sponsoring Cardiac Rehabilitation Week February 10-16, 1991; and

Whereas, the event aims to increase awareness of cardiac rehabilitation and the opportunities that it provides for improved cardiovascular health and quality of life for cardiac patients;

Therefore, I, James R. Thompson, Governor of the State of Illinois, proclaim February 10-16, 1991, as CARDIAC

REHABILITATION WEEK in Illinois, in recognition of the role that cardiac rehabilitation programs play in the prevention and treatment of cardiovascular diseases.

Issued by the Governor January 11, 1991.
Filed with the Secretary of State January 22, 1991.

91-009

FINANCIAL AID AWARENESS MONTH

Whereas, the State of Illinois has fostered the development of an impressive complement of public, private, and proprietary programs of higher education; and

Whereas, the Illinois Student Assistance Commission has expanded its responsibilities to helping families undertake long-term and systematic savings plans for postsecondary education through the Illinois Opportunity Programs; and

Whereas, a network of student financial assistance programs consisting of grants, scholarships, loans, and jobs provides access to these educational opportunities for thousands of citizens each year; and

Whereas, the Illinois Student Assistance Commission and the Illinois Association of Student Financial Aid Administrators are conducting a series of informational programs for parents and students to learn about available financial assistance resources;

Therefore, I, James R. Thompson, Governor of the State of Illinois, proclaim February 1991 as FINANCIAL AID AWARENESS MONTH in Illinois. I encourage those needing financial assistance for higher education to take advantage of the opportunity to become more informed about the financial aid available, and I urge families concerned about the future education of their children to learn more about the long-range financial planning programs available to Illinois citizens.

Issued by the Governor January 11, 1991.

Filed with the Secretary of State January 22, 1991.

91-010

RICHARD O. MITCHELL CONGRATULATED

Whereas, Mr. Richard O. Mitchell began his career with the Family Service Agency of North Lake County in 1966, while the agency was still in its teenage years; and

Whereas, under Richard O. Mitchell's administration, the agency has grown from one office serving all of northern Lake County to current four offices in four different communities; and

Whereas, with his help, the Family Service Agency has become one of the largest United Way sub-agencies and has taken an active leadership in the counseling community in Lake County, serving many clients who cannot qualify for services from other profit-oriented agencies; and

Whereas, in 1980, Mr. Mitchell was appointed by Governor

Thompson to the Illinois Advisory Committee of the White House Conference on Families; and

Whereas, on December 31, 1990, Richard O. Mitchell retired from his position as Executive Director of Family Service Agency of North Lake County; and

Whereas, the agency is holding a retirement banquet in Mr. Mitchell's honor on January 18, 1991, at Ramada Inn in Waukegan; Therefore, I, James R. Thompson, Governor of the State of Illinois, congratulate RICHARD O. MITCHELL on his retirement and commend him on the contributions he has made to the Lake County community.

Issued by the Governor January 11, 1991.

Filed with the Secretary of State January 22, 1991.

91-011

SEEING EYE DOG DAY

Whereas, on January 16, 1991, The Seeing Eye of Morristown, New Jersey, the first and most famous dog guide school in North America, will reach a milestone when it places its 10,000th Seeing Eye dog with a blind person; and

Whereas, since 1929, The Seeing Eye has enabled blind people from the United States and Canada to lead independent and fulfilling lives because of their seeing eye dogs; and

Whereas, today, Seeing Eye graduates hold positions in such fields as law, teaching, computer programming, religion, health care, factory work, social work, and journalism; and

Whereas, families and countless children throughout the country have been touched by the unparalleled friendship between seeing eye dogs and their masters and inspired by the accomplishments the dogs have enabled blind people to achieve; and

Whereas, there are 75 graduates of The Seeing Eye in Illinois and 2,130 graduates in the United States;

Therefore, I, James R. Thompson, Governor of the State of Illinois, proclaim January 16, 1991, as SEEING EYE DOG DAY in Illinois.

Issued by the Governor January 11, 1991.

Filed with the Secretary of State January 22, 1991.

ACTION CODES	
JCAR - Joint Committee on Administrative Rules	
A - Adopted Rule	P - Proposed Rule
AR - Adopted Repealer	PF - Prohibited Filing Ordered by JCAR
C - Notice of Corrections	PR - Peremptory or Court ordered Rules
CC - Codification Changes	PR - Proposed Repealer
E - Emergency Rule	R - Refusal to meet JCAR objection
ER - Emergency Repealer	RC - Statement of Recommendation
M - Modification to meet JCAR objections	S - Suspension ordered by JCAR
O - JCAR Statement of Objections	W - Withdrawal to meet JCAR objections

EXAMPLE:

AGRICULTURE, DEPARTMENT OF	
8 Ill. Adm. Code 285	Ill. Grain Insurance Act (P-18048/85; A-6818)
TITLE	PART
	ACTION CODE
	PAGE NUMBER
	PREVIOUS VOLUME
	PAGE NUMBER
	ACTION CODE

ALL RULES ARE LISTED BY PART NUMBER AND HEADING ONLY. (FOR ACTION ON SPECIFIC SECTIONS, PLEASE REFER TO THE SECTIONS AFFECTED INDEX.) IF THERE ARE ANY QUESTIONS, PLEASE CONTACT THE ADMINISTRATIVE CODE DIVISION AT (217) 782-9786.

ABANDONED MINED LANDS RECLAMATION COUNCIL	
62 Ill. Adm. Code 2501	Abandoned Mined Lands Reclamation (P-141)
AGRICULTURE, DEPARTMENT OF	
8 Ill. Adm. Code 255	Agricultural Facilities (E-128)
8 Ill. Adm. Code 270	Ill. State Fair & DuQuoin State Fair, Non-Fair Space Rental & the General Operation of the State Fairgrounds (P-10965/90; A-455)
8 Ill. Adm. Code 125	Meat & Poultry Inspection Act (PP-620; W-1574)
BANKS AND TRUST COMPANIES, COMMISSIONER OF	
38 Ill. Adm. Code 397	Corporate Fiduciary Receivership Account (P-15181/90; A-167)
CENTRAL MANAGEMENT SERVICES, DEPARTMENT OF	
80 Ill. Adm. Code 310	Pay Plan (PP-663)
44 Ill. Adm. Code 5030	Personal Use of State Telephones (P-1203)
CHILDREN AND FAMILY SERVICES	
89 Ill. Adm. Code 431	Confidentiality of Personal Information of Persons Served by the Dept. (P-4303/90; A-24)
COMMERCE AND COMMUNITY AFFAIRS, DEPARTMENT OF	
14 Ill. Adm. Code 510	Ill. Promotion Act (P-677)
47 Ill. Adm. Code 100	Residential Energy Assistance Partnership Program (P-15189/90; O-1575)
56 Ill. Adm. Code 2600	Service Delivery System & State Responsibilities (P-691)

COMMERCE AND COMMUNITY AFFAIRS, DEPARTMENT OF (CONT'D)	
14 Ill. Adm. Code 540	Technology Commercialization Grant-In-Aid Programs (P-11022/90; A-973)
CONSERVATION, DEPARTMENT OF	
17 Ill. Adm. Code 2520	Consignment of Licenses (P-725)
17 Ill. Adm. Code 590	Duck, Goose & Coot Hunting (P-17144/90; A-1487)
17 Ill. Adm. Code 1590	Falconry & the Captive Propagation of Raptors (P-16174/90; A-32)
17 Ill. Adm. Code 220	North Point Marina (P-16182/90; A-1495)
CORRECTIONS, DEPARTMENT OF	
20 Ill. Adm. Code 415	Health Care (P-15228/90; O-21107; R-1168; A-988)
20 Ill. Adm. Code 405	School District #428 (P-1)
EDUCATION, STATE BOARD OF	
23 Ill. Adm. Code 250	Comprehensive Arts Programs (P-11447/90; A-463)
23 Ill. Adm. Code 226	Special Education (P-11068/90; A-40)
EMPLOYMENT SECURITY, DEPARTMENT OF	
56 Ill. Adm. Code 2770	Determination of Unemployment Contributions (P-15659/90; A-172)
56 Ill. Adm. Code 2920	Disqualifying Income & Reduced Benefits (P-13905/90; A-180)
56 Ill. Adm. Code 2765	Payment of Unemployment Contributions, Interest & Penalties (P-13910/90; A-185)
FINANCIAL INSTITUTIONS, DEPARTMENT OF	
38 Ill. Adm. Code 180	Uniform Disposition of Unclaimed Property Act (P-1207)
INSURANCE, DEPARTMENT OF	
50 Ill. Adm. Code 6101	Health Maintenance Organization (P-20205/89; O-2117/90; M-365; A-199)
50 Ill. Adm. Code 3119	Prelicensing & Continuing Education (P-12127/90; A-69)
LOCAL GOVERNMENTAL LAW ENFORCEMENT OFFICERS TRAINING BOARD, ILLINOIS	
20 Ill. Adm. Code 1720	Ill. Police Training Act (P-16198/90; A-999)
MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES, DEPARTMENT OF	
59 Ill. Adm. Code 117	Family Assistance & Home-Based Support Programs for Persons with Mental Disabilities (P-14671/90; A-1511)
59 Ill. Adm. Code 130	Mental Health Clinic Program Standards & Provider Requirements (P-18100/90; O-21140/90; R-1171)
59 Ill. Adm. Code 106	Services Charges (P-14674/90; A-1555)
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TYPE OF RULEMAKING		ACTION CODES	
am	= amendment to existing Section	A	= Adopted rule
cc	= codification changes	C	= Correction
n	= new Section	CC	= Codification Changes
r	= repeal of existing Section	E	= Emergency rule
rc	= recodified	F	= Failure to Remedy Objections
#	= renumbered	M	= Modification
		O	= ICAR Objection
		P	= Proposed rule
		PF	= Prohibited Filing
		PP	= Peremptory rule
		R	= Refusal to Modify or Withdraw
		RC	= ICAR Recommendation
		S	= Suspended rule
		W	= Withdrawal of Proposed rule

TITLE 2		TITLE 17		TITLE 32 (CONTD.)		TITLE 33		TITLE 34		TITLE 35		TITLE 36		TITLE 37		TITLE 38		TITLE 44	
540.160	(P-11022/90; A-973)	540.160	(P-11022/90; A-973)	331.120	am	201.102	am	201.102	am	201.102	am	201.102	am	201.102	am	201.102	am	201.102	am
540.170	(P-11022/90; A-973)	540.170	(P-11022/90; A-973)	331.130	n	201.401	am	201.401	am	201.401	am	201.401	am	201.401	am	201.401	am	201.401	am
540.180	(P-11022/90; A-973)	540.180	(P-11022/90; A-973)	331.200	am	212.205	am	212.205	am	212.205	am	212.205	am	212.205	am	212.205	am	212.205	am
540.190	(P-11022/90; A-973)	540.190	(P-11022/90; A-973)	331.210	r	212.443	am	212.443	am	212.443	am	212.443	am	212.443	am	212.443	am	212.443	am
				331.310	am	214.101	am	214.101	am	214.101	am	214.101	am	214.101	am	214.101	am	214.101	am
				331.310	am	214.104	am	214.104	am	214.104	am	214.104	am	214.104	am	214.104	am	214.104	am
				331.310	am	215.123	am	215.123	am	215.123	am	215.123	am	215.123	am	215.123	am	215.123	am
				331.310	am	230.110	r	230.110	r	230.110	r	230.110	r	230.110	r	230.110	r	230.110	r
				331.310	am	230.140	r	230.140	r	230.140	r	230.140	r	230.140	r	230.140	r	230.140	r
				331.310	am	230.142	r	230.142	r	230.142	r	230.142	r	230.142	r	230.142	r	230.142	r
				331.310	am	230.150	r	230.150	r	230.150	r	230.150	r	230.150	r	230.150	r	230.150	r
				331.310	am	230.160	r	230.160	r	230.160	r	230.160	r	230.160	r	230.160	r	230.160	r
				331.310	am	230.170	r	230.170	r	230.170	r	230.170	r	230.170	r	230.170	r	230.170	r
				331.310	am	230.180	r	230.180	r	230.180	r	230.180	r	230.180	r	230.180	r	230.180	r
				331.310	am	230.190	r	230.190	r	230.190	r	230.190	r	230.190	r	230.190	r	230.190	r
				331.310	am	230.200	r	230.200	r	230.200	r	230.200	r	230.200	r	230.200	r	230.200	r
				331.310	am	230.210	r	230.210	r	230.210	r	230.210	r	230.210	r	230.210	r	230.210	r
				331.310	am	230.211	r	230.211	r	230.211	r	230.211	r	230.211	r	230.211	r	230.211	r
				331.310	am	230.212	r	230.212	r	230.212	r	230.212	r	230.212	r	230.212	r	230.212	r
				331.310	am	230.220	r	230.220	r	230.220	r	230.220	r	230.220	r	230.220	r	230.220	r
				331.310	am	230.230	r	230.230	r	230.230	r	230.230	r	230.230	r	230.230	r	230.230	r
				331.310	am	230.240	r	230.240	r	230.240	r	230.240	r	230.240	r	230.240	r	230.240	r
				331.310	am	230.241	r	230.241	r	230.241	r	230.241	r	230.241	r	230.241	r	230.241	r
				331.310	am	230.250	r	230.250	r	230.250	r	230.250	r	230.250	r	230.250	r	230.250	r
				331.310	am	230.260	r	230.260	r	230.260	r	230.260	r	230.260	r	230.260	r	230.260	r
				331.310	am	230.270	r	230.270	r	230.270	r	230.270	r	230.270	r	230.270	r	230.270	r
				331.310	am	230.280	r	230.280	r	230.280	r	230.280	r	230.280	r	230.280	r	230.280	r
				331.310	am	230.290	r	230.290	r	230.290	r	230.290	r	230.290	r	230.290	r	230.290	r
				331.310	am	230.300	r	230.300	r	230.300	r	230.300	r	230.300	r	230.300	r	230.300	r
				331.310	am	230.310	r	230.310	r	230.310	r	230.310	r	230.310	r	230.310	r	230.310	r
				331.310	am	230.320	r	230.320	r	230.320	r	230.320	r	230.320	r	230.320	r	230.320	r
				331.310	am	230.330	r	230.330	r	230.330	r	230.330	r	230.330	r	230.330	r	230.330	r
				331.310	am	230.340	r	230.340	r	230.340	r	230.340	r	230.340	r	230.340	r	230.340	r
				331.310	am	230.350	r	230.350	r	230.350	r	230.350	r	230.350	r	230.350	r	230.350	r
				331.310	am	230.360	r	230.360	r	230.360	r	230.360	r	230.360	r	230.360	r	230.360	r
				331.310	am	230.370	r	230.370	r	230.370	r	230.370	r	230.370	r	230.370	r	230.370	r
				331.310	am	230.371	r	230.371	r	230.371	r	230.371	r	230.371	r	230.371	r	230.371	r
				331.310	am	230.380	r	230.380	r	230.380	r	230.380	r	230.380	r	230.380	r	230.380	r
				331.310	am	230.390	r	230.390	r	230.390	r	230.390	r	230.390	r	230.390	r	230.390	r
				331.310	am	230.400	r	230.400	r	230.400	r	230.400	r	230.400	r	230.400	r	230.400	r

TITLE 2		TITLE 17		TITLE 23		TITLE 32		TITLE 33		TITLE 34		TITLE 35		TITLE 36		TITLE 37		TITLE 38	
540.160	(P-11022/90; A-973)	540.160	(P-11022/90; A-973)	226.40	am	331.10	am	226.40	am	226.40	am	226.40	am	226.40	am	226.40	am	226.40	am
540.170	(P-11022/90; A-973)	540.170	(P-11022/90; A-973)	226.520	am	331.110	am	226.520	am	226.520	am	226.520	am	226.520	am	226.520	am	226.520	am
540.180	(P-11022/90; A-973)	540.180	(P-11022/90; A-973)	226.525	am	331.120	am	226.525	am	226.525	am	226.525	am	226.525	am	226.525	am	226.525	am
540.190	(P-11022/90; A-973)	540.190	(P-11022/90; A-973)	226.552	am	331.130	am	226.552	am	226.552	am	226.552	am	226.552	am	226.552	am	226.552	am
				226.555	am	331.140	am	226.555	am	226.555	am	226.555	am	226.555	am	226.555	am	226.555	am
				226.560	am	331.150	am	226.560	am	226.560	am	226.560	am	226.560	am	226.560	am	226.560	am
				226.605	am	331.160	am	226.605	am	226.605	am	226.605	am	226.605	am	226.605	am	226.605	am
				226.612	am	331.170	am	226.612	am	226.612	am	226.612	am	226.612	am	226.612	am	226.612	am
				226.615	am	331.180	am	226.615	am	226.615	am	226.615	am	226.615	am	226.615	am	226.615	am
				226.620	am	331.190	am	226.620	am	226.620	am	226.620	am	226.620	am	226.620	am	226.620	am
				226.680	am	331.200	am	226.680	am	226.680	am	226.680	am	226.680	am	226.680	am	226.680	am
				226.684	am	331.210	am	226.684	am	226.684	am	226.684	am	226.684	am	226.684	am	226.684	am
				226.720	am	331.220	am	226.720	am	226.720	am	226.720	am	226.720	am	226.720	am	226.720	am
				226.730	am	331.230	am	226.730	am	226.730	am	226.730	am	226.730	am	226.730	am	226.730	am
				250.70	am	331.240	am	250.70	am	250.70	am	250.70	am	250.70	am	250.70	am	250.70	am
						331.250	am												
						331.260	am												
						331.270	am												
						331.280	am												
						331.290	am												
						331.300	am												
						331.310	am												
						331.320	am												
						331.330	am												
						331.340	am												
						331.350	am												
						331.360	am												
						331.370	am												
						331.380	am												
						331.390	am												
						331.400	am												
						331.410	am												
						331.420	am												
						331.430	am												
						331.440	am												
						331.450	am												

TITLE 47	100.111	(P-15189/90; O-1575)	am	117.320	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.220	(P-7346/90; A-247)
	100.111	(P-15189/90; O-1575)	am	117.325	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	R-1171	1380.230	(P-7346/90; A-247)
	100.113	(P-15189/90; O-1575)	am	117.330	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.240	(P-7346/90; A-247)
				117.335	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am		1380.250	(P-7346/90; A-247)
TITLE 50	3119.20	(P-12127/90; A-69)	am	117.340	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am		1380.260	(P-7346/90; A-247)
	3119.30	(P-12127/90; A-69)	am	117.345	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am		1380.270	(P-7346/90; A-247)
	3119.40	(P-12127/90; A-69)	am	117.350	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am		1380.280	(P-7346/90; A-247)
	3119.50	(P-12127/90; A-69)	am	117.Ap.A	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-14277/90; A-1006)	1380.285	(P-7346/90; A-247)
	3119.60	(P-12127/90; A-69)	am	117.II.A	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-1235)	1380.290	(P-7346/90; A-247)
	3119.70	(P-12127/90; A-69)	am	117.II.B	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-1242)	1380.300	(P-7346/90; A-247)
	3119.80	(P-12127/90; A-69)	am	117.Ap.B	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-1221)	1380.310	(P-7346/90; A-247)
	3119.90	(P-12127/90; A-69)	am	117.II.C	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-1221)	1380.320	(P-7346/90; A-247)
	3119.Ex.A	(P-12127/90; A-69)	am	117.II.D	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-1221)	1380.330	(P-7346/90; A-247)
	3119.Ex.B	(P-12127/90; A-69)	am	130.11	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am		1380.Ap.A	(P-7346/90; A-247)
	3119.Ex.C	(P-12127/90; A-69)	am	130.20	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am			
	3119.Ex.D	(P-12127/90; A-69)	am	130.30	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am			
	6101.20	(P-20205/89; A-199)	am	130.40	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am			
	6101.40	(P-20205/89; A-199)	am	130.60	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am			
	6101.50	(P-20205/89; A-199)	am	130.70	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am			
	6101.100	(P-20205/89; A-199)	am	130.80	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am			
6101.110	(P-20205/89; O-21140/90; M-365; A-199)	am	130.90	(P-14671/90; A-1511)	r	(E-18100/90; O-21140/90; R-1171)	am				
6101.111	(P-20205/89; A-199)	n	130.100	(P-14671/90; O-21140/90; R-1171)	am	(E-18100/90; O-21140/90; R-1171)	am				
6101.112	(P-20205/89; A-199)	n	130.110	(P-14671/90; O-21140/90; R-1171)	am	(E-18100/90; O-21140/90; R-1171)	am				
6101.130	(P-20205/89; A-199)	am	130.120	(P-14671/90; O-21140/90; R-1171)	am	(E-18100/90; O-21140/90; R-1171)	am				
6101.140	(P-20205/89; A-199)	am	130.130	(P-14671/90; O-21140/90; R-1171)	am	(E-18100/90; O-21140/90; R-1171)	am				
6101.141	(P-20205/89; A-199)	n	130.140	(P-14671/90; O-21140/90; R-1171)	am	(E-18100/90; O-21140/90; R-1171)	am				
6101.142	(P-20205/89; A-199)	n	130.150	(P-14671/90; O-21140/90; R-1171)	am	(E-18100/90; O-21140/90; R-1171)	am				
6101.160	(P-20205/89; A-199)	r	130.160	(P-14671/90; O-21140/90; R-1171)	am	(E-18100/90; O-21140/90; R-1171)	am				
6101.20	(P-20205/89; A-199)	am	130.170	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am				
6101.20	(P-20205/89; A-199)	am	130.180	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am				
6101.20	(P-20205/89; A-199)	am	130.190	(P-14671/90; A-1511)	am	(P-14671/90; A-1511)	am				
TITLE 56	2600.20	(P-691)	am	106.25	(P-14674/90; A-1555)	am	(P-14674/90; A-1555)	am	(P-418)	510.10	(P-418)
	2765.325	(P-13910/90; A-185)	am	106.45	(P-14674/90; A-1555)	am	(P-14674/90; A-1555)	am	(P-418)	510.60	(P-418)
	2770.110	(P-15659/90; A-172)	am	117.100	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	510.120	(P-418)
	2920.40	(P-13905/90; A-180)	am	117.110	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	510.130	(P-418)
				117.115	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.65	(P-418)
				117.120	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.90	(P-418)
				117.125	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.100	(P-418)
				117.130	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.200	(P-418)
				117.135	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.300	(P-418)
				117.140	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.400	(P-418)
				117.145	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.500	(P-418)
				117.200	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.600	(P-418)
				117.205	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.700	(P-418)
				117.210	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.800	(P-418)
				117.215	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-418)	540.900	(P-418)
	TITLE 59 (CONTD.)	117.220	(P-14671/90; A-1511)	am	117.225	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(P-14277/90; A-1006)	1380.220
117.230		(P-14671/90; A-1511)	n	117.235	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	R-1171	1380.230	(P-7346/90; A-247)
117.240		(P-14671/90; A-1511)	n	117.245	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.240	(P-7346/90; A-247)
117.300		(P-14671/90; A-1511)	n	117.305	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.250	(P-7346/90; A-247)
117.305		(P-14671/90; A-1511)	n	117.310	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.260	(P-7346/90; A-247)
117.310		(P-14671/90; A-1511)	n	117.315	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.270	(P-7346/90; A-247)
117.315		(P-14671/90; A-1511)	n	117.320	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.280	(P-7346/90; A-247)
117.320		(P-14671/90; A-1511)	n	117.325	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.285	(P-7346/90; A-247)
117.325		(P-14671/90; A-1511)	n	117.330	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.290	(P-7346/90; A-247)
117.330		(P-14671/90; A-1511)	n	117.335	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.295	(P-7346/90; A-247)
117.335		(P-14671/90; A-1511)	n	117.340	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.300	(P-7346/90; A-247)
117.340		(P-14671/90; A-1511)	n	117.345	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.305	(P-7346/90; A-247)
117.345		(P-14671/90; A-1511)	n	117.350	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.310	(P-7346/90; A-247)
117.350		(P-14671/90; A-1511)	n	117.355	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.315	(P-7346/90; A-247)
117.355		(P-14671/90; A-1511)	n	117.360	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.320	(P-7346/90; A-247)
117.360		(P-14671/90; A-1511)	n	117.365	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.325	(P-7346/90; A-247)
117.365	(P-14671/90; A-1511)	n	117.370	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.330	(P-7346/90; A-247)	
117.370	(P-14671/90; A-1511)	n	117.375	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.335	(P-7346/90; A-247)	
117.375	(P-14671/90; A-1511)	n	117.380	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.340	(P-7346/90; A-247)	
117.380	(P-14671/90; A-1511)	n	117.385	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.345	(P-7346/90; A-247)	
117.385	(P-14671/90; A-1511)	n	117.390	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.350	(P-7346/90; A-247)	
117.390	(P-14671/90; A-1511)	n	117.395	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.355	(P-7346/90; A-247)	
117.395	(P-14671/90; A-1511)	n	117.400	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.360	(P-7346/90; A-247)	
117.400	(P-14671/90; A-1511)	n	117.405	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.365	(P-7346/90; A-247)	
117.405	(P-14671/90; A-1511)	n	117.410	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.370	(P-7346/90; A-247)	
117.410	(P-14671/90; A-1511)	n	117.415	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.375	(P-7346/90; A-247)	
117.415	(P-14671/90; A-1511)	n	117.420	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.380	(P-7346/90; A-247)	
117.420	(P-14671/90; A-1511)	n	117.425	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.385	(P-7346/90; A-247)	
117.425	(P-14671/90; A-1511)	n	117.430	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.390	(P-7346/90; A-247)	
117.430	(P-14671/90; A-1511)	n	117.435	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.395	(P-7346/90; A-247)	
117.435	(P-14671/90; A-1511)	n	117.440	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.400	(P-7346/90; A-247)	
117.440	(P-14671/90; A-1511)	n	117.445	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.405	(P-7346/90; A-247)	
117.445	(P-14671/90; A-1511)	n	117.450	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.410	(P-7346/90; A-247)	
117.450	(P-14671/90; A-1511)	n	117.455	(P-14671/90; A-1511)	n	(P-14671/90; A-1511)	am	(E-18100/90; O-21140/90; R-1171)	1380.415	(P-7346/90; A-247)	
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3000.130	n	(P-433)	141.1125	am	(P-831) (E-1121)
3000.140	n	(P-433)	141.1200	am	(P-831) (E-1121)
3000.140	n	(P-433)	141.1240	am	(P-831) (E-1121)
3000.150	n	(P-433)	141.1240	am	(P-831) (E-1121)
3000.160	n	(P-433)	141.1520	am	(P-831) (E-1121)
3000.170	n	(P-433)	141.1840	am	(P-831) (E-1121)
3000.170	n	(P-433)	141.1880	am	(P-831) (E-1121)
3000.200	n	(P-433)	141.2040	am	(P-831) (E-1121)
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3000.220	n	(P-433)	141.2520	am	(P-831) (E-1121)
3000.230	n	(P-433)	141.2640	am	(P-831) (E-1121)
3000.240	n	(P-433)	141.2920	am	(P-831) (E-1121)
3000.250	n	(P-433)	141.3320	am	(P-831) (E-1121)
3000.260	n	(P-433)	141.3560	am	(P-831) (E-1121)
3000.260	n	(P-433)	141.3600	am	(P-831) (E-1121)
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